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THE GENERAL STATUTES OF NORTH CAROLINA

Containing General Laws of North Carolina through
the Legislative Session of 1963

PREPARED UNDER THE SUPERVISION OF THE DEPARTMENT OF JUSTICE
OF THE STATE OF NORTH CAROLINA

Annotated, under the Supervision of the Department of Justice,
by the Editorial Staff of the Publishers

Under the Direction of

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Volume 3B

1964 REPLACEMENT VOLUME

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Scope of Volume

Statutes:

Full text of Chapters 117 through 136 of the General Statutes of North Carolina, including all enactments through the Legislative Session of 1963 heretofore contained in 1958 Replacement Volume 3B of the General Statutes and the 1963 Cumulative Supplement thereto.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports volumes 1-260 (p. 132).
Federal Reporter volumes 1-300.
Federal Reporter 2nd Series volumes 1-316.
Federal Supplement volumes 1-216.
United States Reports volumes 1-372.
Supreme Court Reporter volumes 1-83 (p. 1559).
North Carolina Law Review volumes 1-41 (p. 662).

Abbreviations

(The abbreviations below are those found in the General Statutes which refer to prior codes.)

P. R. Potter's Revisal (1821, 1827)
R. S. Revised Statutes (1837)
R. C. Revised Code (1854)
C. C. P. Code of Civil Procedure (1868)
Code Code (1883)
Rev. Revisal of 1905
C. S. Consolidated Statutes (1919, 1924)

Preface

Volume 3 of the General Statutes of North Carolina of 1943 was replaced in 1952 by recompiled volumes 3A, 3B and 3C, containing Chapters 106 through 166 of the General Statutes, as amended and supplemented by the enactments of the General Assembly down through the 1951 Session. In 1958 a replacement volume 3B was published in which the statutes and annotations appearing in the recompiled volume 3B and in the 1957 Cumulative Supplement thereto were combined. Replacement volume 3B and recompiled volume 3C have now been replaced by replacement volumes 3B, 3C and 3D, which combine the statutes and annotations appearing in the previous volumes 3B and 3C and in the 1963 Cumulative Supplement thereto.

Volume 3A contains Chapters 106 through 116. Volume 3B contains Chapters 117 through 136. Volume 3C contains Chapters 137 through 156. Volume 3D contains Chapters 157 through 167.

In replacement volume 3B the form and the designations of subsections, subdivisions and lesser divisions of sections have in many instances been changed, so as to follow in every case the uniform system of numbering, lettering and indentation adopted by the General Statutes Commission. For example, subsections in the replacement volume are designated by lower case letters in parentheses, thus: (a). Subdivisions of both sections and subsections are designated by Arabic numerals in parentheses, thus: (1). Lesser divisions likewise follow a uniform plan. Attention is called to the fact that it has not, of course, been possible, except in replacement volumes 3C and 3D, to make corresponding changes in any references that may appear in other volumes to sections contained in volume 3B.

The historical references appearing at the end of each section have been rearranged in chronological order. For instance, the historical references appended to § 31-5.1 read as follows: (1784, c. 204, s. 14; 1819, c. 1004, ss. 1, 2; 1840, c. 62; R. C., c. 119, s. 22; Code, s. 2176; Rev., s. 3115; C. S., s. 4133; 1945, c. 140; 1953, c. 1098, s. 3.) In this connection attention should be called to a peculiarity in the manner of citing the early acts in the historical references. The acts through the year 1825 are cited, not by the chapter numbers of the session laws of the particular years, but by the chapter numbers assigned to them in Potter's Revisal (published in 1821 and containing the acts from 1715 through 1820) or in Potter's Revisal continued (published in 1827 and containing the acts from 1821 through 1825). Thus, in the illustration set out above the citations "1784, c. 204, s. 14; 1819, c. 1004, ss. 1, 2" refer to the chapter numbers in Potter's Revisal and not to the chapter numbers of the Laws of 1784 and 1819, respectively. The chapter numbers in Potter's Revisal and Potter's Revisal continued run consecutively, and hence do not correspond, at least after 1715, to the chapter numbers in the session laws of the particular years. After 1825 the chapter numbers in the session laws are used.

This replacement volume has been prepared and published under the supervision of the Department of Justice of the State of North Carolina. The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes, and any suggestions they may have for improving them, to the Department, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

THOMAS WADE BRUTON,
Attorney General.

April 1, 1964.

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ARTICLE 1.

Rural Electrification Authority

§ 117-1. **Rural Electrification Authority created; appointment; terms of members.**—An agency to be known as the North Carolina Rural Electrification Authority is hereby created as an agency of the State of North Carolina, such Authority to consist of six members to be appointed by the governor of North Carolina; two appointed for a term of two years; two for a term of four years and two for a term of six years, and their successors shall be appointed for a term of four years. (1935, c. 288, s. 1.)

Editor's Note.—For an analysis of this chapter, see 13 N. C. Law Rev. 382. For article on Public Utilities—Rural Electrification

Co-Operatives—Certificate of Convenience and Necessity, see 16 N. C. Law Rev. 46.

§ 117-2. **Powers.**—The purpose of said North Carolina Rural Electrification Authority is to secure electrical service for the rural districts of the State where service is not now being rendered, and it is hereby empowered to do the following in order to accomplish that purpose:

- (1) To investigate all applications from communities unserved, or inadequately served, with electrical energy in North Carolina, and to determine the feasibility of obtaining such service therefor.
- (2) To employ such personnel as shall be necessary to conduct surveys, assist

- the several communities to organize and finance extensions of rural distribution lines; to negotiate with power companies and other agencies for the supply of electric energy for and on behalf of the rural communities that desire service.
- (3) To contact the power companies and other agencies contiguous to the area and areas desiring service, for the purpose of arranging for the extension by said companies, or other agencies, of service in that community for such extension as may be feasible for the power company, or other agency, contiguous to the area to finance itself.
 - (4) To make estimates of costs of extension which the power company would not be willing to finance and report such findings to the citizens of the community desiring service or to the corporations organized under this chapter, to be known as "electric membership corporations."
 - (5) To estimate the service charges which said community would have to set up in addition to the rates for energy as may be found necessary in order to make extension self-liquidating.
 - (6) To have authority to call upon the Utilities Commission of the State to fix such rates and service charges as will be necessary to accomplish the purpose, and the right to petition the Utilities Commission to require extension of lines by the power companies when, in its opinion, it is proper and feasible.
 - (7) To have the power of eminent domain for the purpose of condemning rights of way for the erection of transmission and distribution lines, either in its own name, or in its own name on behalf of the electric membership corporations to be formed as provided by law.
 - (8) To have such right and authority to secure for said local communities or electric membership corporations as may be set up assistance from any agency of the United States government, either by gift or loan, as may be possible to aid said local community in securing electric energy for said community.
 - (9) To investigate all applications from communities for the formation of electric membership corporations and determine and pass upon the question of granting the authority to form such corporations; to provide forms for making such applications; and to do all things necessary to a proper determination of the question of establishment of the local electric membership corporations.
 - (10) To act as agent for any electric membership corporations formed under direction or permission of the North Carolina Rural Electrification Authority in securing loans or grants from any agency of the United States government.
 - (11) To prescribe rules and regulations and the necessary blanks for the electric membership corporations in making applications for grant or loan from any agency of the United States government.
 - (12) To do all other acts and things which may be necessary to aid the rural communities in North Carolina to secure electric energy. (1935, c. 288, s. 2.)

Cited in *Duke Power Co. v. Blue Ridge Electric Membership Corp.*, 253 N. C. 596, 117 S. E. (2d) 812 (1961).

§ 117-3. Authority not granted power to fix rates or order line extensions; right of suggestion and petition.—The Authority itself shall not be a rate making body, and shall have no power to fix the rates or service charges, or to order the extension of lines by the power companies. The function of making rates and service charges and orders for the extension of lines shall remain in the Utilities Commission of North Carolina, and the Authority shall only have the right of suggestion and petition to the Utilities Commission of its opinion as to the proper rates

and service charges and line extensions, and no rate recommended or suggested by the Authority shall be effective until approved by the Utilities Commission: Provided, that if the Utilities Commission of North Carolina does not have the right under the existing law to fix service charges in addition to the rates prescribed for electrical energy, and the power to order line extensions, such power and authority is hereby granted the Utilities Commission of North Carolina to fix and promulgate service charges in addition to rates in any community which avails itself of this article, and form a corporation authorized hereunder to be known as electric membership corporation, and to order line extensions when it shall determine that the same is proper and feasible. (1935, c. 288, s. 3.)

Stated in *State v. Municipal Corporations*, 243 N. C. 193, 90 S. E. (2d) 519 (1955).

§ 117-4. Organization meeting of Authority; chairman and secretary.—Promptly after their appointment the Authority shall meet and organize at such meeting, and at the first meeting of each year thereafter, the members shall choose from their number a chairman. They shall also choose a secretary, who shall be a competent engineer and shall fix his salary subject to the approval as provided in §§ 143-35 to 143-47. (1935, c. 288, s. 4.)

§ 117-5. Compensation and expenses.—All members of the Authority, except the chairman and secretary, shall receive as compensation for their services the sum of seven dollars (\$7.00) per day and actual expenses incurred while in the performance of their duties. Members of the Authority shall not be allowed per diem and expenses for more than twelve meetings in any one year. (1935, c. 288, s. 5; 1939, c. 97.)

ARTICLE 2.

Electric Membership Corporations.

§ 117-6. Title of article.—This article may be cited as the “Electric Membership Corporation Act.” (1935, c. 291, s. 1.)

Local Modification.—*Carteret, Craven, Greene, Hoke, Onslow, Pamlico and Pitt*: 1941, c. 314.

Purpose of Article.—The North Carolina legislation with respect to electric membership corporations, was enacted to implement the act of Congress creating the Rural Electrification Administration. *State v. Municipal Corporations*, 243 N. C. 193, 90 S. E. (2d) 519 (1955).

Cited in *Carolina Power, etc., Co. v. Bowman*, 228 N. C. 319, 45 S. E. (2d) 531 (1947); *Tennessee Elec. Power Co. v. Tennessee Valley Authority*, 306 U. S. 118, 59 S. Ct. 366, 83 L. Ed. 543 (1939); *Pitt & Greene Electric Membership Corp. v. Carolina Power & Light Co.*, 255 N. C. 258, 120 S. E. (2d) 749 (1961); *State v. Haywood Electric Membership Corp.*, 260 N. C. 59, 131 S. E. (2d) 865 (1963).

§ 117-7. Definitions.—The following terms, whenever used or referred to in this article, shall have the following meanings, unless a different meaning clearly appears from the context:

- (1) “Acquire” shall mean acquire by purchase, lease, devise, gift or other mode of acquisition.
- (2) “Board” shall mean the board of directors of a corporation formed under this article.
- (3) “Corporation” shall mean a corporation formed under this article.
- (4) “Federal agency” shall mean and include the United States of America, the President of the United States of America, the Federal Emergency Administrator of Public Works and any and all other authorities, agencies, and instrumentalities of the United States of America, heretofore or hereafter created.
- (5) “Law” shall mean any act or statute, general, special or local of this State.
- (6) “Person” shall mean and include natural persons, firms, associations, corporations, business trusts, partnerships and bodies politic. (1935, c. 291, s. 2.)

§ 117-8. Formation in unserved communities; filing application with Rural Electrification Authority.—When any number of persons residing in the community not served, or inadequately served, with electrical energy desire to secure electrical energy for their community and desire to form corporations to be known as electric membership corporations for said purpose, they shall file application with the North Carolina Rural Electrification Authority for permission to form such corporation. (1935, c. 291, s. 3.)

Continued Operation after Area Becomes Integral Part of Town.—For a case involving the authority of an electric membership corporation to continue to operate in an area which was a rural area when its dis-

tribution lines were constructed but is now an integral part of a town, see *Pee Dee Electric Membership Corp. v. Carolina Power & Light Co.*, 253 N. C. 610, 117 S. E. (2d) 764 (1961).

§ 117-9. Issuance of privilege for formation of such corporation.—Whenever any such application is made by as many as five members of the community, the North Carolina Rural Electrification Authority shall cause a survey of said territory to be made and if, in its opinion, the proposal is feasible, shall issue to said community a privilege for the formation of a corporation as hereinafter set out. Whenever an application has been filed by any community with the North Carolina Rural Electrification Authority, and its application for formation of an electric membership corporation has been approved, the same may be formed as hereinafter provided. (1935, c. 291, s. 4.)

Cited in *Pee Dee Electric Membership Corp. v. Carolina Power & Light Co.*, 253 N. C. 610, 117 S. E. (2d) 764 (1961).

§ 117-10. Formation authorized.—Any number of natural persons not less than three may, by executing, filing and recording a certificate as hereinafter provided, form a corporation not organized for pecuniary profit for the purpose of promoting and encouraging the fullest possible use of electric energy in the rural section of the State by making electric energy available to inhabitants of the State at the lowest cost consistent with sound economy and prudent management of the business of such corporations. (1935, c. 291, s. 5.)

Quoted in *State v. Municipal Corporations*, 243 N. C. 193, 90 S. E. (2d) 519 (1955); *Duke Power Co. v. Blue Ridge Electric Membership Corp.*, 253 N. C. 596, 117 S. E. (2d)

812 (1961); *Pee Dee Electric Membership Corp. v. Carolina Power & Light Co.*, 253 N. C. 610, 117 S. E. (2d) 764 (1961).

§ 117-11. Contents of certificate of incorporation.—(a) Required Provisions.—The certificate of incorporation shall be entitled and endorsed "Certificate of Incorporation of Electric Membership Corporation" (the blank space being filled in with the name of the corporation), and shall state:

- (1) The name of the corporation, which name shall be such as to distinguish it from any other corporation.
- (2) A reasonable description of the territory in which its operations are principally to be conducted.
- (3) The location of its principal office and the post-office address thereof.
- (4) The maximum number of directors, not less than three.
- (5) The names and post-office addresses of the directors, not less than three, who are to manage the affairs of the corporation for the first year of its existence, or until their successors are chosen.
- (6) The period, if any, limited for the duration of the corporation. If the duration of the corporation is to be perpetual, this fact should be stated.
- (7) The terms and conditions upon which members of the corporation shall be admitted.

(b) Permissible Provisions.—The certificate of incorporation of a corporation may also contain any provision not contrary to law which the incorporators may choose to insert for the regulation of its business, and for the conduct of the

affairs of the corporation; and any provisions, creating, defining, limiting or regulating the powers of the corporation, its directors and members. (1935, c. 291, s. 6.)

§ 117-12. Execution and filing of certificate of incorporation by residents of territory to be served.—The natural persons executing the certificate of incorporation shall be residents of the territory in which the principal operations of the corporation are to be conducted who are desirous of using electric energy to be furnished by the corporation. The certificate of incorporation shall be acknowledged by the subscribers before an officer qualified to administer oaths. When so acknowledged, the certificate may be filed in the office of the Secretary of State, who shall forthwith prepare a certified copy or copies thereof and forward one to the clerk of the superior court in each county in which a portion of the territory of the corporation is located, who shall forthwith file such certified copy or copies in their respective offices and record the same as other certificates of incorporation are recorded. As soon as the provisions of this section have been complied with, the proposed corporation described in the certificate so filed, under its designated name, shall be and constitute a body corporate. (1935, c. 291, s. 7.)

§ 117-13. Board of directors; compensation; president and secretary.—Each corporation formed hereunder shall have a board of directors and the powers of a corporation shall be vested in and exercised by a majority of the directors in office. The directors of the corporation, other than those named in its certificate of incorporation, shall be elected annually by the members entitled to vote, but if the bylaws so provide the directors may be elected on a staggered term basis: Provided, that the total number of directors on a board shall be so divided that not less than one third of them, or as nearly thereto as their division for that purpose will permit, shall be elected annually, and no term shall be longer than for three years; and provided further that, except as may be necessary in inaugurating such a plan, all directors shall be elected for terms of equal duration. The directors must be members and shall be entitled to receive for their services only such compensation as is provided in the bylaws: Provided, that such compensation shall not exceed twenty dollars (\$20.00) for each day of their attendance at meetings for which their attendance has been duly authorized. The board shall elect annually from its own number a president and a secretary. (1935, c. 291, s. 8; 1959, c. 387, s. 1.)

Editor's Note.—The 1959 amendment re-wrote this section.

Electric Membership Corp., 253 N. C. 596, 117 S. E. (2d) 812 (1961).

Cited in Duke Power Co. v. Blue Ridge

§ 117-14. Powers of board.—The board shall have power to do all things necessary or convenient in conducting the business of a corporation, including, but not limited to:

- (1) The power to adopt and amend bylaws for the management and regulation of the affairs of the corporation: Provided however, that the certificate of incorporation may reserve to the members of the corporation the power to amend the bylaws. The bylaws of a corporation may make provisions not inconsistent with law or its certificate of incorporation, regulating the admission, withdrawal, suspension or expulsion of members; the transfer of membership; the fees and dues of members and the termination of memberships on nonpayment of dues or otherwise; the number, times and manner of choosing, qualifications, terms of office, official designations, powers, duties, and compensations of its officers; defining a vacancy in the board or in any office and the manner of filling it; the number of members to constitute a quorum at meetings, the date of the annual meeting and the giving of notice thereof, and the holding of special meetings and the giving of notice thereof; the terms and conditions upon which the corporation is to render service to its members; the disposition of the revenues and receipts of the corpo-

ration; regular and special meetings of the board and the giving of notice thereof.

- (2) To appoint agents and employees and to fix their compensation and the compensation of the officers of the corporation.
- (3) To execute instruments.
- (4) To delegate to one or more of the directors or to the agents and employees of a corporation such powers and duties as it may deem proper.
- (5) To make its own rules and regulations as to its procedure. (1935, c. 291, s. 9; 1941, c. 260.)

§ 117-15. Certificates of membership.—A corporation may issue to its members certificates of membership and each member shall be entitled to only one vote at the meetings of the corporation. (1935, c. 291, s. 10.)

§ 117-16. Corporate purpose; terms and conditions of membership.—The corporate purpose of each corporation formed hereunder shall be to render service to its members only, and no person shall become or remain a member unless such person shall use energy supplied by such corporation and shall have complied with the terms and conditions in respect to membership contained in the bylaws of such corporation: Provided, that such terms and conditions of membership shall be reasonable; and provided further, that no bona fide applicant for membership, who is able and willing to satisfy and abide by all such terms and conditions of membership, shall be denied arbitrarily, or capriciously, or without good cause. (1935, c. 291, s. 11; 1959, c. 387, s. 2.)

Editor's Note. — The 1959 amendment added the proviso.

Persons who are not members of an electric membership corporation may not maintain an action challenging the validity of acts of the director of the corporation, and the fact that such persons are eligible and might hereafter become members and maintain an action under the principle announced in *Correll v. Greensboro Water Supply Co.*, 124 N. C. 328, 32 S. E. 720, 70 Am. St. Rep. 589, 46 L. R. A. 513 (1899), does not affect this result, since they have no rights or interest in the management of the corporation until they are members. *Bailey v. Carolina Power, etc., Co.*, 212 N. C. 768, 195 S. E. 64 (1938).

Membership is not terminated by a change in the character of the community from rural to urban. The corporation has the

right and the duty to continue to serve its members. However it is not entitled to expand its services in such an area. *Duke Power Co. v. Blue Ridge Electric Membership Corp.*, 256 N. C. 62, 122 S. E. (2d) 782 (1961).

A member may continue to receive current though he is not a resident of the area served. The test is: Where is the service rendered?, not the residence of the member. *Duke Power Co. v. Blue Ridge Electric Membership Corp.*, 256 N. C. 62, 122 S. E. (2d) 782 (1961).

Applied in *Duke Power Co. v. Blue Ridge Electric Membership Corp.*, 253 N. C. 596, 117 S. E. (2d) 812 (1961).

Quoted in *Pee Dee Electric Membership Corp. v. Carolina Power & Light Co.*, 253 N. C. 610, 117 S. E. (2d) 764 (1961).

§ 117-17. General grant of powers.—Each corporation formed under this article is hereby vested with all power necessary or requisite for the accomplishment of its corporate purpose and capable of being delegated by the legislature; and no enumeration of particular powers hereby granted shall be construed to impair any general grant of power herein contained, nor to limit any such grant to a power or powers of the same class as those so enumerated. (1935, c. 291, s. 12.)

Cited in *Duke Power Co. v. Blue Ridge Electric Membership Corp.*, 253 N. C. 596, 117 S. E. (2d) 812 (1961).

§ 117-18. Specific grant of powers.—Subject only to the Constitution of the State, a corporation created under the provisions of this article shall have power to do any and all acts or things necessary or convenient for carrying out the purpose for which it was formed, including, but not limited to:

- (1) To sue and be sued.
- (2) To have a seal and alter the same at pleasure.
- (3) To acquire, hold and dispose of property, real and personal, tangible and

- intangible, or interests therein, and to pay therefor in cash or on credit, and to secure and procure payment of all or any part of the purchase price thereof on such terms and conditions as the board shall determine.
- (4) To render service and to acquire, own, operate, maintain and improve a system or systems.
 - (5) To pledge all or any part of its revenue or mortgage or otherwise encumber all or any part of its property for the purpose of securing the payment of the principal of and interest on any of its obligations.
 - (6) The right to apply to the North Carolina Rural Electrification Authority for permission to construct or place any parts of its system or lines in and along any State highway or over any lands which are now, or may be, the property of this State, or any political subdivision thereof. In all questions involving the right of way, or the right of eminent domain, the rulings of the North Carolina Electrification Authority shall be final.
 - (7) To accept gifts or grants of money, property, real or personal, from any person or federal agency, and to accept voluntary and uncompensated services.
 - (8) To make any and all contracts necessary or convenient for the full exercise of the powers in this article granted, including, but not limited to, contracts with any person or federal agency, for the purchase or sale of energy; for the management and conduct of the business of the corporation, including the regulation of the rates, fees or charges for service rendered by the corporation.
 - (9) To sell, lease, mortgage or otherwise encumber or dispose of all or any part of its property, as hereinafter provided.
 - (10) To contract debts, borrow money, and to issue or assume the payment of bonds.
 - (11) To fix, maintain and collect fees, rents, tolls and other charges for service rendered.
 - (12) To perform any and all of the foregoing acts and to do any and all of the foregoing things under, through or by means of its own officers, agents and employees, or by contracts with any person or federal agency.
 - (13) To extend, construct, operate and maintain power lines into adjacent states. (1935, c. 291, s. 13; 1941, c. 335.)

Editor's Note. — The 1941 amendment added subdivision (13).

Legislative Purpose.—The legislature, by this section, made certain that when necessary to create membership corporations to provide citizens of rural areas with electricity, the corporations so created would not be hampered by having to obtain permission to function from some other agency. *Duke Power Co. v. Blue Ridge Electric*

Membership Corp., 253 N. C. 596, 117 S. E. (2d) 812 (1961).

An electric membership corporation and a public utility corporation are free to compete in rural areas, unless restricted by the provisions of a contract between them. *Pitt & Greene Electric Membership Corp. v. Carolina Power & Light Co.*, 255 N. C. 258, 120 S. E. (2d) 749 (1961).

§ 117-19. Declared public agency of State; taxes and assessments.—Whenever an electric membership corporation is formed in the manner herein provided, the same shall be, and is hereby declared to be a public agency, and shall have within its limits for which it was formed the same rights as any other political subdivision of the State, and all property owned by said corporation and used exclusively for the purpose of said corporation shall be held in the same manner and subject to the same taxes and assessments as property owned by any county or municipality of the State so long as said property is owned by said electric membership corporation and is used for the purposes for which the corporation was formed. (1935, c. 291, s. 14.)

§ 117-20. Encumbrance, sale, etc., of property.—No corporation may sell, mortgage, lease or otherwise encumber or dispose of any of its property (other than merchandise and property, which in the judgment of the board, is not necessary or useful in operating the corporation) unless

- (1) Authorized so to do by the votes of at least a majority of its members, and
- (2) The consent of the holders of seventy-five per centum (75%) in amount of the bonds of such corporation then outstanding is obtained. (1935, c. 291, s. 15.)

§ 117-21. **Issuance of bonds.**—A corporation formed hereunder shall have power and is hereby authorized, from time to time, to issue its bonds in anticipation of its revenue for any corporate purpose. Said bonds may be authorized by resolution or resolutions of the board, and may bear such date or dates, mature at such time or times, not exceeding forty years from their respective dates, bear interest at such rate or rates, not exceeding six per centum per annum, payable semiannually, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms or redemption, not exceeding par and accrued interest, as such resolution or resolutions may provide. Such bonds may be sold in such manner and upon such terms as the board may determine at not less than par and accrued interest. Any provision of law to the contrary notwithstanding, any bonds and the interest coupons appertaining thereto, if any, issued pursuant to this article shall possess all of the qualities of negotiable instruments. (1935, c. 291, s. 16.)

§ 117-22. **Covenants or agreements for security of bonds.**—In connection with the issuance of any bonds, a corporation may make covenants or agreements and do any and all acts or things that a business corporation can make or do under the laws of the State in order to secure its obligations or which, in the absolute discretion of the board, tend to make the obligations more marketable, notwithstanding that such covenants, agreements, acts and things may constitute limitations on the exercise of the powers herein granted. (1935, c. 291, s. 17.)

§ 117-23. **Purchase and cancellation of bonds.**—A corporation shall have power out of any funds available therefor to purchase any bonds issued by it at a price not exceeding the principal amount thereof and accrued interest thereon. All bonds so purchased shall be canceled. (1935, c. 291, s. 18.)

§ 117-24. **Dissolution.**—Any corporation created hereunder may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and endorsed "Certificate of Dissolution of" (the blank space being filled in with the name of the corporation) and shall state:

- (1) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.
- (2) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the dates on which the certificates of incorporation of the original corporations were filed.
- (3) That the corporation elects to dissolve.
- (4) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the president or a vice-president, and the secretary or an assistant secretary, who shall make and annex an affidavit, stating that they have been authorized to execute and file such certificate by the votes cast in person or by proxy by a majority of the members of the corporation entitled to vote.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall pass to and become the property of the State. (1935, c. 291, s. 19.)

§ 117-25. Amendment of certificate of incorporation.—A corporation created hereunder may amend its certificate of incorporation to change its corporate name, to increase or reduce the number of its directors or change any other provision therein: Provided, however, that no corporation shall amend its certificate of incorporation to embody therein any purpose, power or provisions which would not be authorized if its original certificate, including such additional or changed purpose, power or provisions, were offered for filing at the time a certificate under this section is offered. Such amendment may be accomplished by filing a certificate which shall be entitled and endorsed "Certificate of Amendment of Electric Membership Corporation" and state:

- (1) The name of the corporation, and if it has been changed, the name under which it was originally incorporated.
- (2) The date of filing the certificate of incorporation in each public office where filed.
- (3) The purposes, powers, or provisions, if any, to be amended or eliminated, and the purposes, powers or provisions, if any, to be added or substituted.

Such certificate shall be subscribed in the same manner as an original certificate of incorporation hereunder by the president or a vice-president, by the secretary or the assistant secretary, who shall make and annex an affidavit stating that they have been authorized to execute and file such certificate by the votes cast in person or by proxy by a majority of the members of the corporation entitled to vote. Such certificate shall be filed in the same places as an original certificate of incorporation and thereupon the amendment shall be deemed to have been effected. (1935, c. 291, s. 20.)

§ 117-26. Application for grant or loan from governmental agency.—Whenever any corporation organized hereunder desires to secure a grant or loan from any agency of the United States government now in existence or hereafter authorized, they shall apply through the North Carolina Rural Electrification Authority and not direct to the United States agency, and the said North Carolina Rural Electrification Authority alone shall have the authority to make applications for grants or loans to any corporations created hereunder. (1935, c. 291, s. 21.)

§ 117-27. Article complete in itself and controlling.—This article is complete in itself and shall be controlling. The provisions of any other law, general, special, or local except as provided in this article, shall not apply to a corporation formed under this article. (1935, c. 291, s. 23.)

Editor's Note.—For comment on enactment, see 19 N. C. Law Rev. 517.

Certificate of Public Convenience and Necessity Not Required.—In view of this section, an electric membership corporation is not required by § 62-101, before beginning the construction or operation of its facilities for serving its members by furnishing them electricity for lights and power, to obtain from the Utilities Commissioner

of North Carolina a certificate that public convenience and necessity requires, or will require, the construction and operation of such facilities. *Pitt & Greene Electric Membership Corp. v. Carolina Power & Light Co.*, 255 N. C. 258, 120 S. E. (2d) 749 (1961).

Cited in *Grimesland v. Washington*, 234 N. C. 117, 66 S. E. (2d) 794 (1951).

ARTICLE 3.

Miscellaneous Provisions.

§ 117-28. Foreign corporations; domestication; rights and privileges.—Any electric or telephone membership corporation created and existing under and by

virtue of the laws of any adjoining state, which corporation desires to extend its lines into this State for the purpose of obtaining its power and energy needs, or an exchange interconnection, or for the purpose of supplying electric or telephone service to citizens and residents of this State, shall be and is hereby granted the right to domesticate in this State as such electric or telephone membership corporation, and, after such domestication, any such corporation shall have and enjoy all the rights, privileges, benefits and immunities granted to electric or telephone membership corporations under the laws of this State and shall be subject to the terms, provisions and conditions of this chapter, and other applicable laws, to the same extent as such laws are now applicable to membership corporations organized under the laws of this State. (1941, c. 12; 1959, c. 387, s. 3.)

Editor's Note.—The 1959 amendment re-wrote this section.

For comment on this section prior to amendment, see 19 N. C. Law Rev. 517.

ARTICLE 4.

Telephone Service and Telephone Membership Corporations.

§ 117-29. Assistance from Rural Electrification Authority in procuring adequate telephone service.—Any number of persons residing in any rural community who are not provided with telephone service or are inadequately provided with same, may make application to the Rural Electrification Authority, upon such form as may be provided by the Rural Electrification Authority for assistance in securing telephone service, showing the circumstances of such community or communities with regard to telephone service and the need therefor. The Rural Electrification Authority shall make an investigation of the situation with respect to telephone service in such rural community or communities and if, upon investigation, it appears that such community or communities are not served with needed telephones or are inadequately served, the facts with reference thereto shall be collected by the Rural Electrification Authority and the Rural Electrification Authority shall promptly bring these facts to the attention of any telephone company serving the area, and shall make reasonable efforts to get such telephone company to provide the needed telephone service in such community or communities. (1945, c. 853, s. 1.)

§ 117-30. Telephone membership corporations.—In the event it is ascertained by the Rural Electrification Authority that the community or communities referred to in the foregoing section are in need of telephone service and that there is a sufficient number of persons to be served to justify such services, and the telephone company serving in the area in which the community or communities are located is unwilling to provide such service, a telephone membership corporation may be organized by such community or communities in the same manner that electric membership corporations may be formed under article two of this chapter, and all of the provisions of said article shall be applicable to the formation of telephone membership corporations and such corporations shall have all the authority, powers and duties of such a corporation when formed under the provisions of said article; except that the provisions of §§ 117-8 and 117-9 shall not be applicable to the organization of a telephone membership corporation, and except that such corporation so formed shall have no authority to engage in any business except the telephone business necessary to serving the community or communities prescribed in the application: Provided, that the references in said article to "power lines" or "energy" as to such telephone membership corporations shall be construed to mean telephone lines and telephone service. Provided further, that nothing herein shall be construed to authorize any telephone membership corporation organized hereunder to duplicate any line or lines, systems or other means by which adequate telephone service is being furnished; or to build or to construct a telephone line, or telephone lines, or telephone systems, or otherwise to provide facilities or means of furnishing telephone service to any person, community, town or city then being adequately served by a telephone company, corporation or system; or to provide telephone service in

an unserved area while any telephone company, corporation or system is acting in good faith and with reasonable diligence in arranging to provide adequate telephone service to such person, community, town or city. (1945, c. 853, s. 2.)

§ 117-31. Power of Rural Electrification Authority to prosecute requested investigations.—In investigating the application filed with the Rural Electrification Authority under the provisions of § 117-30 of this article, the Rural Electrification Authority shall have the authority to employ such personnel as shall be necessary to conduct surveys; to contact the telephone companies serving the general area for the purpose of arranging for extension of telephone service by such companies to such community or communities; to make estimates of the cost of the extension of telephone service to such community or communities; to call upon the Utilities Commission of the State to fix such rates as will be applicable to such service; to secure for such community or communities any assistance which may be available from the federal government by gift or loan or in any other manner; to investigate all applications for the creation of telephone membership corporations and determine and pass upon the question of granting authority to form such corporation; to provide forms for making such applications, and to do all things necessary to a proper determination of the question of the establishment of such telephone membership corporations in keeping with the provisions of this article; to act as agent for any such telephone membership corporation in securing loans or grants from any agency of the United States government; to prescribe rules and regulations and the necessary blanks for such membership corporations in making applications for grants or loans from any agency of the United States government; to do all other acts and things which may be necessary to aid the rural communities in North Carolina in securing telephone service. (1945, c. 853, s. 3.)

§ 117-32. Loans from federal agencies; authority of county, etc., to engage in telephone business.—Whenever any corporation organized under the provisions of this article desires to secure a grant or loan from any agency of the United States government now in existence or hereafter authorized, it shall apply through the North Carolina Rural Electrification Authority and not direct to the United States agency, and the said North Carolina Rural Electrification Authority alone shall have the authority to make application for grants or loans to any such corporation. Nothing in this article shall be deemed to authorize any county, city or town to engage in the telephone business. (1945, c. 853, s. 4.)

Chapter 118.

Firemen's Relief Fund.

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ARTICLE 1.

Fund Derived from Fire Insurance Companies.

§ 118-1. **Fire insurance companies to report premiums collected.**—Every fire insurance company, corporation, or association doing business in any town or city in North Carolina that has, or may hereafter have, a regularly organized fire department under the control of the mayor and city council or other governing body of said town or city, and which has in serviceable condition for fire duty apparatus and equipment amounting in value to one thousand dollars or more, and which enforces the fire laws to the satisfaction of the Insurance Commissioner, shall return to the Insurance Commissioner of the State of North Carolina a just and true account of all premiums collected and received from all fire insurance business done within the limits of such towns and cities during the year ending December thirty-first, or such portion thereof as they may have transacted such business in such towns and cities. Such companies, corporations, or associations shall make said returns within sixty days from and after the thirty-first day of December of each year. (1907, c. 831, s. 1; 1919, c. 180; C. S., s. 6063; 1929, c. 286.)

Editor's Note.—Session Laws 1957, c. 102, s. 9, provides that this chapter is repealed as to the city of Albemarle insofar as inconsistent with the provisions of the act.

§ 118-1.1. **Definitions.**—As used in this chapter, the words “city”, “cities”, “town” or “towns” shall also include and mean sanitary districts, school districts, rural fire districts and any other political subdivisions of the State having an organized fire department.

§ 118-2. **Tax on receipts for premiums.**—Every fire insurance company, corporation, or association as aforesaid shall, within seventy-five days from December thirty-first of each year, deliver and pay to the State Insurance Commissioner the sum of fifty cents out of and from every one hundred dollars, and at that rate, upon the amount of all premiums written on fire and lightning policies covering property situated within the limits of such towns and cities during the year ending December thirty-first in each year, or for such portion of each year as said company, corporation, or association shall have done business in said towns and cities. (1907, c. 831, s. 2; C. S., s. 6064.)

This section carries no provision requiring the tax to be passed on to the purchaser of insurance. The fact that the tax may be included in the amount paid by the purchaser as a part of the costs of doing busi-

ness does not make the insurer the collecting agent, collecting the tax from the insured. *American Equitable Assurance Co. v. Gold*, 249 N. C. 461, 106 S. E. (2d) 875 (1959).

§ 118-3. **Insurance Commissioner to investigate returns and collect tax.**—Every such company, corporation, or association shall make accurate returns of all business done, both on fire and lightning insurance, covering property situated within the limits of such towns and cities; and in case any fraud, misrepresentation, or mistake of any returns, as provided for in this article, be apparent, it shall be the duty of the Insurance Commissioner to investigate such returns and collect the amount which he shall find to be due. (1907, c. 831, s. 3; C. S., s. 6065.)

§ 118-4. **Penalty for failure to report and pay tax.**—Every fire insurance company, association, or corporation aforesaid which shall knowingly or willfully fail or neglect to report or pay over any of the moneys due on premiums as aforesaid, at the times and in the manner specified in this article, or shall be found upon examination to have made a false return of business done by them, shall for each offense forfeit and pay the sum of three hundred dollars for the use and benefit of the fire department of such town or city, to be recovered in a civil action in the name of the town or city. (1907, c. 831, s. 4; C. S., s. 6066.)

§ 118-5. **Insurance Commissioner to pay fund to treasurer.**—The Insurance Commissioner shall deduct the sum of five per cent from the money so collected from the insurance companies, corporations, or associations, as aforesaid, and pay the same over to the treasurer of the State Firemen's Association for general purposes, and the remainder of the money so collected from the insurance companies, corporations, or associations, as aforesaid, doing business in the several towns and cities in the State having or that may hereafter have organized fire departments as provided in this article, said Insurance Commissioner shall pay to the treasurer of each town or city to be held by him as a separate and distinct fund, and he shall immediately pay the same to the treasurer of the local board of trustees upon his election and qualification, for the use of the board of trustees of the firemen's local relief fund in each town or city, which board shall be composed of five members, residents of said city or town as hereinafter provided for, to be used by them for the purposes as named in § 118-7. (1907, c. 831, s. 5; C. S., s. 6067; 1925, c. 41.)

§ 118-6. **Trustees appointed; organization.**—In each town or city complying with and deriving benefits from the provisions of this article, there shall be appointed a local board of trustees, known as the trustees of the firemen's relief fund, to be composed of five members, two of whom shall be elected by the members of the local fire department, two elected by the mayor and board of aldermen or other local governing body, the remaining member to be named by the Commissioner of Insurance. Their selection and term of office shall be as follows:

- (1) The members of the fire department shall hold an election each January to elect their representatives to above board. In January 1950, the firemen shall elect one member to serve for two years and one member to serve for one year, then each year in January thereafter, they shall elect only one member and his term of office shall be for two years.
- (2) The mayor and board of aldermen or other local governing body shall appoint, in January 1950, two representatives to above board, one to hold office for two years and one to hold office for one year, and each year in January thereafter they shall appoint only one representative and his term of office shall be for two years.
- (3) The Commissioner of Insurance shall appoint one representative in January each year and he shall serve for one year.

All of the above trustees shall hold office for their elected or appointed time, or until their successors are elected or appointed, and shall serve without pay for their services. They shall immediately after election and appointment organize by electing from their members a chairman and a secretary and treasurer, which two last positions may be held by the same person. The treasurer of said board of trustees shall give a good and sufficient bond in a sum equal to the amount of moneys in his hands, to be approved by the Commissioner of Insurance, for the faithful and proper discharge of the duties of his office. If the chief of the local fire department is not named on the board of trustees as above provided, he shall be *ex officio* a member, but without the privilege of voting on matters before the board. (1907, c. 831, s. 6; C. S., s. 6068; 1925, c. 41; 1945, c. 74, s. 1; 1947, c. 720; 1949, c. 1054.)

Editor's Note. — The 1925 amendment specified the amount of the bond required of the treasurer of the board of trustees. The 1945 amendment added the provision in the last sentence. The 1947 amendment

required the bond to be filed with the Commissioner of Insurance. This requirement was omitted by the 1949 amendment which rewrote the section.

§ 118-7. Disbursement of funds by trustees.—The board of trustees shall have entire control of the funds derived from the provisions of this article, and shall disburse the funds only for the following purposes:

- (1) To safeguard any fireman in active service from financial loss, occasioned by sickness contracted or injury received while in the performance of his duties as a fireman.
- (2) To provide a reasonable support for those actually dependent upon the services of any fireman who may lose his life in the fire service of his town, city, or State, either by accident or from disease contracted or injury received by reason of such service. The amount is to be determined according to the earning capacity of the deceased.
- (3) To safeguard any fireman who has honorably served for a period of five years in the fire service of his city or town from ever becoming an inmate of any almshouse.
- (4) To provide for the payment of any fireman's assessment in the Firemen's Fraternal Insurance Fund of the State of North Carolina if the board of trustees finds as a fact that said fireman is unable to pay the said assessment by reason of disability. (1907, c. 831, s. 6; 1919, c. 180; C. S., s. 6069; Ex. Sess. 1921, c. 55; 1923, c. 22; 1925, c. 41; 1945, c. 74, s. 2.)

Local Modification.—Gastonia: 1945, c. 183; Mecklenburg: 1949, c. 728; New Hanover: 1929, c. 328; city of Charlotte: 1947, c. 837; 1949, c. 728; city of Durham: 1951, c. 577; city of Greensboro: 1953, c. 931; city of Asheville: 1959, c. 759; city of Henderson: 1959, c. 943; city of High Point: 1961, c. 523; city of Salisbury: 1963, c. 56; town of Morganton: 1963 c. 689.

Session Laws 1959, c. 869, deleted the

reference to "city of High Point: 1941, c. 138."

Editor's Note. — The 1945 amendment struck out the words "or actually dependent upon charity" formerly appearing at the end of subdivision (3), and rewrote subdivision (4).

Cited in *Carroll v. North Carolina State Firemen's Ass'n*, 230 N. C. 436, 53 S. E. (2d) 524 (1949).

§ 118-8. Trustees to keep account and file report; effect of failure.—The board of trustees shall keep a correct account of all moneys received and disbursed by them, and shall at the annual meeting of the North Carolina State Firemen's Association render an itemized statement of the same, for publication in the annual report, a copy of which report shall be made annually to the State Insurance Commissioner; and in case any board of trustees in any of the towns and cities benefited by this article shall neglect or fail to perform their duties, or shall willfully misappropriate the funds entrusted to their care, or shall neglect or fail to report at the annual meeting of the State Association, then the Insurance Commissioner shall withhold any and all further payments to such board of trustees, or their successors, until the matter has been fully investigated by an official of the State Firemen's Association, and adjusted to the satisfaction of the State Insurance Commissioner. Should such payments be unadjusted for a period of fifteen months from the time when such payments would otherwise have been made, then the Insurance Commissioner shall pay over the said amount to the treasurer of the North Carolina State Firemen's Association and it shall constitute a part of the firemen's relief fund. (1907, c. 831, s. 7; C. S., s. 6070; 1925, c. 41.)

§ 118-9. Municipal clerk to certify list of fire companies; effect of failure.—The clerk of any city, town, village, or other municipal corporation having an organized fire department shall, on or before the thirty-first day of October in each year, make and file with the Commissioner of Insurance his certificate, stating the existence of such department, the number of steam, hand, or other engines, hook and ladder trucks, and hose cars in actual use, the number of organized companies, and the system of water supply in use for such departments, together with such other facts as the Commissioner of Insurance may require, on a blank to be furnished by him. If the certificate required by this section is not filed with the Commissioner of Insurance on or before October thirty-first in any year, the city, town or village so failing to file such certificate shall forfeit the payment next due to be paid to said board of trustees, and the Commissioner of Insurance shall pay over said amount to the treasurer of the North Carolina State Firemen's Association and same shall constitute a part of the firemen's relief fund: Provided, that the Commissioner of Insurance is authorized and empowered to pay over to the local board of trustees of the firemen's relief fund for the benefit of the fire department of any city, town, village or other municipal corporation having an organized fire department, which has otherwise complied with the provisions of this chapter, the proper allocation or share of the funds derived under the provisions of this chapter for the year of 1953, and which funds up to this time have been withheld because the clerk of such city, town, village or other municipal corporation having an organized fire department failed to file the certificate required by this section or failed to file same on or before October 31, 1953; the certificates filed subsequent to October 31, 1953, shall be deemed to have been filed in substantial compliance with this section, and as to those organized fire departments which have not yet filed any certificate for 1953, the Commissioner of Insurance may pay to such department its proper share of the funds derived under this chapter, upon the filing of such certificate for said year; all other requirements of this chapter must have been complied with and this proviso applies only to the funds of the year 1953. (1907, c. 831, s. 8; C. S., s. 6071; 1925, c. 41; 1925, c. 309, s. 1; 1955, c. 228.)

Editor's Note.—The 1955 amendment added the proviso.

§ 118-10. Fire departments to be members of State Firemen's Association and send delegate to meeting.—For the purpose of supervision and as a guaranty that provisions of this article shall be honestly administered in a business-like manner, it is provided that every department enjoying the benefits of this law shall be a member of the North Carolina State Firemen's Association, and send at least one accredited delegate to the annual meeting of said Association and comply with

its constitution and bylaws. If the fire department of any city, town or village shall fail to send at least one delegate to the annual meeting of the State Firemen's Association and otherwise fails to comply with the constitution and bylaws of said Association, said city, town or village shall forfeit its right to the next annual payment due from the funds mentioned in this article, and the Insurance Commissioner shall pay over said amount to the treasurer of the North Carolina State Firemen's Association and same shall constitute a part of the firemen's relief fund: Provided, however, that the failure of any department to have a delegate or representative present at the annual meeting of the Association shall not have such effect if in the opinion of a majority of the executive committee of said Association such delegate or representative had a valid excuse for his failure so to attend. (1907, c. 831, s. 9; 1919, c. 180; C. S., s. 6072; 1925, c. 41; c. 309, s. 2.)

Attendance of Delegate at Colored State Firemen's Association Compliance with Section.—Session Laws, 1955, c. 498, provides: "In all cases in which a municipality has a colored volunteer fire department with or without a fire chief of the white race, the attendance of an accredited delegate from said* fire department at the regular annual meeting of the Colored State Firemen's

Association shall be deemed a compliance with G. S. 118-10, and, in this respect, shall be sufficient compliance with said section to entitle such municipality to receive, for the use and benefit of the local board of trustees of the Firemen's Local Relief Fund, its proportionate part of the funds disbursed under the provisions of chapter 118 of the General Statutes, if otherwise eligible."

§ 118-11. No discrimination on account of color.—Inasmuch as there are in a number of the towns and cities of this State fire companies composed exclusively of colored men, it is expressly provided that the local boards of trustees shall make no discrimination on account of color in the payment of benefits. (1907, c. 831, s. 10; C. S., s. 6073.)

ARTICLE 2.

State Appropriation.

§ 118-12. Application of fund.—The money paid into the hands of the treasurer of the North Carolina State Firemen's Association shall be known and remain as the "Firemen's Relief Fund" of North Carolina, and shall be used as a fund for the relief of firemen, members of such Association, who may be injured or rendered sick by disease contracted in the actual discharge of duty as firemen, and for the relief of widows, children, and if there be no widow or children, then dependent mothers of such firemen killed or dying from disease so contracted in such discharge of duty; to be paid in such manner and in such sums to such individuals of the classes herein named and described as may be provided for and determined upon in accordance with the constitution and bylaws of said Association, and such provisions and determinations made pursuant to said constitution and bylaws shall be final and conclusive as to the persons entitled to benefits and as to the amount of benefit to be received, and no action at law shall be maintained against said Association to enforce any claim or recover any benefit under this article or under the constitution and bylaws of said Association; but if any officer or committee of said Association omit or refuse to perform any duty imposed upon him or them, nothing herein contained shall be construed to prevent any proceedings against said officer or committee to compel him or them to perform such duty. No fireman shall be entitled to receive any benefits under this section until the firemen's relief fund of his city or town shall have been exhausted. (1891, c. 468, s. 3; Rev., s. 4393; C. S., s. 6058; 1925, c. 41.)

A fireman may not sue the State Firemen's Association on a claim for benefits under this chapter. *Carroll v. North Carolina State Firemen's Ass'n*, 230 N. C. 436, 53 S. E. (2d) 524 (1949).

A claim for hospital expenses incurred

as a result of an injury received by a fireman in the course of his duties does not come within the benefits provided for members of the State Firemen's Association. *Carroll v. North Carolina State Firemen's Ass'n*, 230 N. C. 436, 53 S. E. (2d) 524 (1949).

§ 118-13. Treasurer to file report and give bond.—The treasurer of the North Carolina State Firemen's Association shall make a detailed report to the State Treasurer of the yearly expenditures of the appropriation under this chapter on or before the end of the fiscal year, showing the total amount of money in his hands at the time of the filing of the report, and shall give a bond to the State of North Carolina with good and sufficient sureties to the satisfaction of the Treasurer of the State of North Carolina in a sum not less than the amount of money on hand as shown by said report. (1891, c. 468, s. 4; Rev., s. 4394; C. S., s. 6059; 1925, c. 41.)

§ 118-14. Who shall participate in the fund.—The line of duty entitling one to participate in the fund shall be so construed as to mean actual fire duty only, and any actual duty connected with the fire department when directed to perform the same by an officer in charge. (1891, c. 468, s. 5; Rev., s. 4395; C. S., s. 6060; 1925, c. 41.)

§ 118-15. Who may become members.—Any organized fire company in North Carolina, holding itself ready for duty, may, upon compliance with the requirements of said constitution and bylaws, become a member of the North Carolina State Firemen's Association, and any fireman of good moral character in North Carolina, and belonging to an organized fire company, who will comply with the requirements of the constitution and bylaws of the North Carolina State Firemen's Association, may become a member of said Association. (1891, c. 468, s. 6; Rev., s. 4396; C. S., s. 6061; 1925, c. 41.)

§ 118-16. Applied to members of regular fire company.—The provisions of §§ 118-12 to 118-16 shall apply to any fireman who is a member of a regularly organized fire company, and is a member in good standing of the North Carolina State Firemen's Association. (1891, c. 468, s. 7; Rev., s. 4397; C. S., s. 6062; 1925, c. 41.)

Cross Reference.—As to the volunteer firemen at the insane hospitals not sharing in the fund provided by this section, see § 122-35.

Editor's Note. — The 1925 amendment added the requirement that the fireman be a member in good standing of the State Firemen's Association.

§ 118-17. Treasurer to pay fund to Volunteer Firemen's Association.—The treasurer of the North Carolina State Firemen's Association shall pay to the treasurer of the North Carolina State Volunteer Firemen's Association one-sixth of the funds arising from the five per cent paid him by the Insurance Commissioner each year, to be used by said North Carolina State Volunteer Firemen's Association for general purposes. (1925, c. 41.)

ARTICLE 3.

North Carolina Firemen's Pension Fund.

§ 118-18. Fund established; administration by board of trustees; rules and regulations.—For the purpose of furthering the general welfare and police powers and obligations of the State with respect to the protection of all its citizens from the consequences of loss or damage by fire, as heretofore recognized in part by the enactment of G. S. 160-117 et seq., of increasing the protection of life and all property against loss or damage by fire, of improving fire fighting techniques, of increasing the potential of fire departments, organizations and groups, of fostering increased and more widely spread training of personnel of said departments, organizations and groups, and of providing incentive and inducement for the participation in fire prevention and fighting activities and for the establishment of new, improved or extended fire departments, organizations and groups to the end that ultimately all areas of the State and all its citizens will receive the benefit of fire protection and a resulting reduction of loss or damage to life and property by fire hazard, and

in recognition of the public service rendered to the State of North Carolina and its citizens by the "eligible firemen," as hereinafter defined, there is hereby created in this State, a fund to be known and designated the "North Carolina Firemen's Pension Fund" and it shall be administered as set forth in this article. Said North Carolina Firemen's Pension Fund is established to provide pension allowances and other benefits for eligible firemen in the State who elect to become members as hereinafter provided. The board of trustees hereby created shall have authority to administer said fund and shall make necessary rules and regulations to carry out the provisions of this article. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1961, c. 980.)

Editor's Note.—This article, formerly consisting of §§ 118-18 to 118-37, as rewritten by the 1959 act contains §§ 118-18 to 118-32.

The 1961 amendment to this section inserted after "hazard" near the end of the first sentence "and in recognition of the public service rendered to the State of North Carolina and its citizens by the 'eligible firemen,' as hereinafter defined."

The effective date of this article, prior to the 1959 amendment, was originally June 12, 1957. The effective date was changed to August 15, 1957, by Session Laws 1957, c. 1392.

As to refund of money paid to the Commissioner of Insurance under the Firemen's Pension Fund Act, see Session Laws 1959, c. 183.

Constitutionality of 1959 Amendment.—Session Laws 1959, c. 1211, amending § 105-228.5 so as to impose a tax on fire insurance contracts for the purpose of providing funds for the payment of pensions to retired firemen, c. 1212, rewriting article 3 of chapter 118 to create a firemen's pension fund to be derived from the proceeds of the tax, and c. 1273, appropriating moneys from the general fund to the pension fund, limited to revenues to be produced by the tax, although separately enacted must be treated as a single statute. As so considered, they are unconstitutional under

Const., Art. I, § 17, since they impose a tax on one group, a limited group of insurance companies, for the sole purpose of paying the salaries of a particular class or group of public employees. *Great American Ins. Co. v. Johnson*, 257 N. C. 367, 126 S. E. (2d) 92 (1962), decided under §§ 105-288.5 and 118-18 et seq. as they stood prior to their amendment in 1961.

Tax Imposed by Former Article Unconstitutional.—Before its amendment in 1959, this article imposed a tax, at the rate of \$1.00 for every \$100.00, on premiums on fire and lightning insurance policies covering property in areas in the State where fire protection was available. The amount of the premium was required to be increased by the amount of the tax. The article provided that it should not be construed to include Farmers Mutual Fire Insurance Associations. It was held that the tax was upon the purchaser of insurance, rather than on the insurer, and that the exemption of purchasers from insurers which were members of the Farmers Mutual Fire Insurance Association resulted in unconstitutional discrimination and lack of uniformity. *American Equitable Assurance Co. v. Gold*, 249 N. C. 461, 106 S. E. (2d) 875 (1959); *In re North Carolina Fire Ins. Rating Bureau*, 249 N. C. 466, 106 S. E. (2d) 879 (1959).

§ 118-19. Creation and membership of board of trustees; compensation.—There is hereby created a board to be known as the "Board of Trustees of the North Carolina Firemen's Pension Fund". Said board shall consist of five members, namely:

- (1) The State Insurance Commissioner, who shall act as chairman.
- (2) The State Auditor.
- (3) Three members to be appointed by the Governor, one a paid fireman, one a volunteer fireman and one representing the public at large, for terms of four (4) years each.

Board members shall serve without pay, except that all members shall be reimbursed for all necessary expenses that they may incur through service on the board of trustees. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1.)

§ 118-20. Secretary.—There is hereby created an office to be known as secretary of the North Carolina Firemen's Pension Fund. He shall be named by the board and shall serve at its pleasure. The board shall affix his salary, provided it shall not exceed eight thousand dollars (\$8,000.00) annually. The secretary shall be bonded in such amount as may be determined by the board, and he shall promptly transmit to the State Treasurer all moneys collected by him, which said moneys shall be deposited by the State Treasurer in said fund. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1.)

§ 118-21. Powers and duties of board of trustees.—The board of trustees shall have the power and duty to request appropriations out of the general fund for administrative expenses and to provide for the financing of this pension fund, to employ necessary clerical assistance, to determine all applications for pensions, to provide for the payment of pensions hereunder, to make all necessary rules and regulations not inconsistent with law for the government of said fund, to prescribe rules and regulations of eligibility of persons to receive hereunder, to expend funds in accordance with the provisions of this article, and generally to exercise all other powers necessary for the administration of the fund created by this article. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1.)

Board Is Agency of State.—The board of trustees of the North Carolina Firemen's Pension Fund purports to be an agency of the State, charged with the duty, among

others, of administering moneys appropriated from the general fund of the State. *Great American Ins. Co. v. Gold*, 254 N. C. 168, 118 S. E. (2d) 792 (1961).

§ 118-22. State Treasurer to be custodian of fund; appropriations; contributions to fund; expenditures and investments.—The State Treasurer shall be the custodian of the North Carolina Firemen's Pension Fund. The appropriations made by the legislature out of the general fund to provide money for administrative expenses shall be handled in the same manner as any other general fund appropriation. One fourth of the appropriation made out of the general fund to provide for the financing of the pension fund shall be transferred quarterly to a special fund to be known as the North Carolina Firemen's Pension Fund. There shall be set up in the State Treasurer's office a special fund to be known as the North Carolina Firemen's Pension Fund, and all contributions made by the members of this pension fund shall be deposited in said special fund. All expenditures for refunds, investments or benefits shall be in the same manner as expenditures of other special funds. The State Treasurer shall have authority to invest all moneys in said fund not immediately needed for refunds or benefits, in the same manner as provided for investment of the sinking fund. The interest on such investments shall be credited to this special fund. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1961, c. 980.)

Editor's Note.—The 1961 amendment deleted the last sentence which formerly read "In no event shall the appropriation made by the General Assembly in future years exceed the amount of revenue col-

lected from the one per cent (1%) tax on fire and lightning insurance premiums in the preceding bienniums."

Constitutionality of 1959 Amendment.—See same catchline under § 118-18.

§ 118-23. "Eligible firemen" defined; determination and certification of volunteers meeting qualifications.—"Eligible firemen" shall mean all firemen of the State of North Carolina or any political subdivision thereof, including those performing such governmental function in the protection of life and property through fire fighting within a county or city governmental unit and so certified to the Commissioner of Insurance by the governing body thereof, and who belong to a bona fide fire department which, as determined by the Commissioner, is classified as not less than class "9" or class "A" and "AA" departments in accordance with rating methods, schedules, classifications, underwriting rules, bylaws or regulations effective or applied with respect to the establishment of rates or premiums used or charged pursuant to G. S. 58-131.1 or by such other reasonable methods as the Commissioner may determine, and which operates fire apparatus and equipment of the value of five thousand dollars (\$5,000.00) or more, and said fire department holds drills and meetings not less than four hours monthly and said firemen attend at least thirty-six hours of all drills and meetings in each calendar year. As applied to volunteer firemen, "eligible firemen" shall mean those persons meeting the foregoing qualifications and who in the aggregate number are further determined by their departments as not exceeding twenty-five (25) volunteer firemen plus one (1) additional volunteer fireman per one hundred (100) population in the area served by their said respective departments. Each department shall annually determine and report the names of those volunteers meeting the foregoing eligibility

qualifications to its respective board of county commissioners, which upon determination of the validity and accuracy of the same shall promptly certify said list to the board of trustees. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1.)

§ 118-24. Application for membership in fund; monthly payments by members; payments credited to separate accounts of members.—Those firemen who are now eligible may make application through the board of trustees hereinbefore created for membership in said fund within twenty-four months from June 19, 1959. All persons who subsequently become firemen may make application for membership in such fund within twelve months from the date of becoming eligible firemen. Each eligible fireman becoming a member of the fund shall pay the secretary of the board of trustees the sum of five dollars (\$5.00) per month; provided, all eligible firemen electing to become members and serving as such on June 19, 1959, shall pay the sum of five dollars (\$5.00) per month from said date; and further provided, firemen not now eligible but becoming so within five years of June 19, 1959, shall be permitted to become members and receive service time credits upon condition that they pay into said fund the sum of five dollars (\$5.00) per month from June 19, 1959. The said monthly payments shall be credited to the separate account of the member paying same and shall be kept by the custodian in such manner as to be available for payment to said member on account of his withdrawal from membership or to be used with respect to pension payments upon his said retirement. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1.)

§ 118-25. Monthly pensions upon retirement.—Any member who has served 30 years as a fireman in the State of North Carolina, who has been an "eligible fireman" for two years immediately preceding his application for the payment of a pension hereunder, and who is otherwise eligible as provided in § 118-23 hereof, and who has attained the age of 55 years shall be entitled to be paid from the fund herein created a monthly pension. Said monthly pension shall be in the amount of fifty dollars (\$50.00) per month or less as below set forth, provided that those members retiring after the age of 55 and before attaining the age of 60 may elect to receive the reduced amount to account for longer expectancy, said amount of monthly pension available at various retirement ages to be as follows:

Retirement Age	Amount	Retirement Age	Amount
55	\$36.00	58	\$44.00
56	38.00	59	47.00
57	41.00	60 and above	50.00

Members shall pay five dollars (\$5.00) per month as required by § 118-24 until retirement from active service or until they shall have made said monthly payments for a period of 30 years, whichever first occurs; provided, any member retiring after 30 years of service, but before reaching the age of 55 years, shall continue to pay the monthly payments required by § 118-24 in order to continue his membership in the fund until he shall reach the age of 55 or until he shall have paid said monthly payments into the fund for 30 years, whichever is the earlier. Upon reaching retirement age and being otherwise eligible he shall receive a pension as set out above. Notwithstanding the above provisions, no person shall receive a pension hereunder prior to January 1, 1960, but those persons eligible and retiring prior to said date who have paid into said fund five (\$5.00) per month with respect to a period of not less than 12 months or sixty dollars (\$60.00), whichever occurs first, shall be entitled to a pension in the amount of fifty dollars (\$50.00) per month or such reduced amount as set out above commencing January 1, 1960. No person shall be entitled to a pension hereunder until his official duties as a fireman shall have been terminated and he shall have retired as such according to standards or rules fixed by the board of trustees.

The pension herein provided for shall be in addition to all other pensions or benefits provided for under any other statutes of the State of North Carolina or the

United States, notwithstanding any exclusionary provisions of other pensions or retirement systems provided for by law. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1961, c. 980.)

Editor's Note.—The 1961 amendment added the last paragraph.

§ 118-26. Payments in lump sums.—The board of trustees shall direct payment in lump sums from the fund in the following cases:

- (1) To any fireman, upon the attaining of the age of 60 years, who, for any reason, is not qualified to receive the monthly retirement pension and who was enrolled as a member of the fund, an amount equal to the amount paid into the fund by him; provided, this provision shall not be construed to preclude any active fireman from completing the requisite number of years of active service after attaining the age of 60 years as may be necessary to entitle him to the pension as herein provided.
- (2) If any fireman dies before attaining the age at which a pension is payable to him under the provisions of this article, there shall be paid to his widow, or if there be no widow, to his child or children, or, if there be no widow or children, then to his heirs at law as may be determined by the board of trustees or to his estate, if it is administered and there are no heirs, an amount equal to the amount paid into the fund by said fireman.
- (3) If any fireman dies after beginning to receive the pension herein provided for, and before receiving an amount equal to the amount paid into the fund by him, there shall be paid to his widow, or if there be no widow, then to his child or children, or if there be no widow or children, then to his heirs at law as may be determined by the board of trustees, or to his estate, if it is administered and there are no heirs, an amount equal to the difference between the amount paid into the fund by the said fireman and the amount received by him as a pensioner.
- (4) Any member withdrawing from the fund shall, upon proper application, be paid all moneys such individual contributed to the fund, provided, if all or any part of the moneys contributed to the fund with respect to such member shall have been paid by any person, firm or corporation other than the member and notification of such action shall have been made to the board of trustees at the time of said contribution and each of them, then, upon proper application, by such other person, firm or corporation, said moneys contributed to the fund shall be paid to such other person, firm or corporation originally contributing the same, upon the withdrawal of said member. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1.)

§ 118-27. Pro rata reduction of benefits when fund insufficient to pay in full.—If, for any reason, the fund hereby created and made available for any purpose covered by this article shall be insufficient to pay in full any pension benefits, or other charges thereupon then all benefits or payments shall be proratably reduced for such time and in such amount as such deficiency exists; provided, no claim shall accrue with respect to any amount by which pension or benefit payments shall have been so reduced. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1.)

§ 118-28. Provisions subject to future legislative change.—The pensions provided herein shall be subject to future legislative change or revision, and no member of the fund, or any person, shall be deemed to have acquired any vested right to any pension or other payment herein provided. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1.)

§ 118-29. Determination of creditable service; information furnished by applicants for membership.—The board of trustees shall fix and determine by appropriate rules and regulations the number of years credit for service of firemen.

Firemen who are now serving as such shall furnish the board with information upon applying for membership as to previous service. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1.)

§ 118-30. Length of service not affected by serving in more than one fire department; transfer from one department to another.—A fireman's length of service shall not be affected by the fact that he may have served in more than one fire department as defined in § 118-23, and upon transfer from one department to another, notice of such fact shall be given to the board. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1.)

§ 118-31. Effect of member being six months delinquent in making monthly payments.—Any member who becomes six months delinquent in making monthly payments as required by § 118-23 of this article by the tenth of the month with respect to which said payment shall be due shall be removed from membership in the fund and shall lose one year of service credit and all rights hereunder with respect thereto for each six months' period that he remains so delinquent. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1.)

§ 118-32. Exemption of pensions from attachment, etc.; rights nonassignable.—The pensions herein provided shall not be subject to attachment, garnishments or judgments against the fireman entitled to same, nor shall any rights in said fund or pensions or benefits therefrom be assignable. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1.)

Chapter 119.

Gasoline and Oil Inspection and Regulation.

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- Sec.
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 119-34. Responsibility of retailers for quality of products.
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ARTICLE 1.

Lubricating Oils.

§ 119-1. **Unlawful substitution.**—It shall be unlawful for any person, firm or corporation to fill any order for lubricating oil, designated by a trademark or distinctive trade name for an automobile or other internal combustion engine with a spurious or substitute oil unless and until it is explained to the person giving the order that the oil offered is not the oil that he has ordered, and the purchaser shall thereupon elect to take the substitute article that is being offered to him. (1927, c. 174, s. 1.)

§ 119-2. **Brand or trade name of lubricating oil to be displayed.**—It shall be unlawful for any person, firm or corporation to sell, offer for sale or delivery, or to cause or permit to be sold, offered for sale or delivery, any oil represented as lubricating oil for internal combustion engines unless there shall be firmly attached to or painted at or near the point or outlet from which said oil represented as lubricating oil for internal combustion engines is drawn or poured out for sale or delivery, a sign or label consisting of the word or words in at all times legible letters not less than one-half inch in height comprising the brand or trade name of said lubricating oil: Provided, that if any of said lubricating oil shall have no brand or trade name, the above required sign or label shall consist of the words in letters not less than three inches high, "Lubricating Oil No Brand." (1927, c. 174, s. 2.)

§ 119-3. **Misrepresentation of brands for sale.**—It shall be unlawful for any person, firm or corporation to display, at the place of sale, any sign, label or other designating mark which describes any lubricating oil for internal combustion engines not actually sold or offered for sale or delivered at the location at which the sign, label or other designating mark is displayed, or to display any label upon any container which label names or describes any lubricating oil for internal combustion engines not actually contained therein, but offered for sale or sold as such: Provided, this section shall not prevent the advertising of such products when no lubricating oil is offered for sale at such place of advertisement. (1927, c. 174, s. 3.)

§ 119-4. **Misdemeanor.**—Any person, firm or corporation violating any of the provisions of this article shall for each offense be deemed guilty of a misdemeanor and punished by a fine of not less than fifty dollars (\$50.00) or more than three hundred dollars (\$300.00), or by imprisonment in the county jail for not less than twenty or more than ninety days, or both. (1927, c. 174, s. 4.)

§ 119-5. **Person violating or allowing employee to violate article to forfeit \$100.**—Any person violating this article, or any person, firm or corporation whose servant, agent or other employee violates this article in the course of his employment shall forfeit to the manufacturer whose oil was ordered, or to the proprietor of the trademark or trade name by which the oil order was designated by the purchaser, as the case may be, one hundred dollars (\$100.00) for each such offense, to be recovered by suit by the person, firm or corporation claiming the penalty against the person, firm or corporation from whom the penalty is claimed. (1927, c. 174, s. 5.)

§ 119-6. Inspection duties devolve upon Commissioner of Agriculture.—The duties of inspection required by §§ 119-1 through 119-5 shall be performed by the Commissioner of Agriculture. (1933, c. 214, s. 9; 1949, c. 1167.)

Editor's Note. — The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue."

ARTICLE 2.

Liquid Fuels, Lubricating Oils, Greases, etc.

§ 119-7. Sale of automobile fuels and lubricants by deception as to quality, etc., prohibited.—It shall be unlawful for any person, firm, copartnership, partnership or corporation to store, sell, offer or expose for sale any liquid fuels, lubricating oils, greases or other similar products in any manner whatsoever which may deceive, tend to deceive or have the effect of deceiving the purchaser of said products, as to the nature, quality or quantity of the products so sold, exposed or offered for sale. (1933, c. 108, s. 1.)

Cross Reference. — As to prohibition against sale of antifreeze made from certain compounds, see § 66-66.

§ 119-8. Sale of fuels, etc., different from advertised name prohibited.—No person, firm, partnership, copartnership, or corporation shall keep, expose or offer for sale, or sell any liquid fuels, lubricating oils, greases or other similar products from any container, tank, pump or other distributing device other than those manufactured or distributed by the manufacturer or distributor indicated by the name, trademark, symbol, sign or other distinguishing mark or device appearing upon said tank, container, pump or other distributing device in which said products were sold, offered for sale or distributed. (1933, c. 108, s. 2.)

Cross Reference. — As to requirement Applied in *Maxwell v. Shell Eastern Petroleum Products*, 90 F. (2d) 39 (1937).
that brand name be displayed, see § 119-2.

§ 119-9. Imitation of standard equipment prohibited.—It shall be unlawful for any person, firm or corporation to disguise or camouflage his or their own equipment, by imitating the design, symbol, or trade name of the equipment under which recognized brands of liquid fuels, lubricating oils and similar products are generally marketed. (1933, c. 108, s. 3.)

§ 119-10. Juggling trade names, etc., prohibited.—It shall be unlawful for any person, firm or corporation to expose or offer for sale or sell under any trademark, trade name or name or other distinguishing mark any liquid fuels, lubricating oils, greases or other similar products other than those manufactured or distributed by the manufacturer or distributor marketing such products under such trade name, trademark or name or other distinguishing mark. (1933, c. 108, s. 4.)

§ 119-11. Mixing different brands for sale under standard trade name prohibited.—It shall be unlawful for any person or persons, firm or firms, corporation or corporations or any of their servants, agents or employees, to mix, blend or compound the liquid fuels, lubricating oils, greases or similar products of the manufacturer or distributor with the products of any other manufacturer or distributor, or adulterate the same, and expose or offer for sale or sell such mixed, blended or compounded products under the trade name, trademark or name or other distinguishing mark of either of said manufacturers or distributors, or as the adulterated products of such manufacturer or distributor: Provided, however, that nothing herein shall prevent the lawful owner thereof from applying its own trademark, trade name or symbol to any product or material. (1933, c. 108, s. 5.)

§ 119-12. Aiding and assisting in violation of article prohibited.—It shall be unlawful, and upon conviction punishable as will hereinafter be stated, for any person or persons, firm or firms, partnership or copartnership, corporation or corporations or any of their agents or employees, to aid or assist any other person

in violating any of the provisions of this article by depositing or delivering into any tank, pump, receptacle or other container any liquid fuels, lubricating oils, greases or other like products other than those intended to be stored, therein, as indicated by the name of the manufacturer or distributor, or the trademark, the trade name, name or other distinguishing mark of the product displayed in the container itself, or on the pump or other distributing device used in connection therewith, or shall by any other means aid or assist another in the violation of any of the provisions of this article. (1933, c. 108, s. 6.)

§ 119-13. Violation made misdemeanor.—Every person, firm or firms, partnership or copartnership, corporation or corporations, or any of their agents, servants or employees, violating any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not more than one thousand dollars (\$1,000.00) and by imprisonment not to exceed twelve (12) months, or by either or both in the discretion of the trial judge. (1933, c. 108, s. 7.)

ARTICLE 2A.

Regulation of Re-Refined or Re-Processed Oil.

- § 119-13.1. Definitions.—As used in this article,
- (1) “Re-refined or re-processed oil” means lubricating oil for use in internal combustion engines, which has been re-refined or processed in whole or part from previously used lubricating oils.
 - (2) “Specifications” means the minimum chemical properties or analysis as designated by the American Society for Testing Materials (A. S. T. M.) standards as indicated below :

Society of Automotive Engineers					A.S.T.M. Method
Viscosity	#20	30	40	50	
Gravity	26/27	25½/26	25/26	24/25	D 287-39
Flash-Cleveland Open Cup	420°F.	430°F.	440°F.	450°F.	D 92-46
Fire-Cleveland Open Cup	460°F.	470°F.	480°F.	490°F.	D 92-46
Viscosity @ 130°F. Saybolt Universal Seconds	150	190	255	—	D 88-44
Viscosity @ 210°F. Saybolt Universal Min.	53	60	70	85	D 88-44
Neutralization No. Max.	.50%	.50%	.50%	.50%	D 974-48T
Viscosity Index Min.	85	85	85	85	D 567-41
Pour Point. Min.	5°F.	10°F.	10°F.	15°F.	D 97-47
Carbon Residue Conradson	.4%	.5%	.6%	.9%	D 189-46
Water and Sediment	Nil	Nil	Nil	Nil	D 96-47T

(1953, c. 1137.)

Cited in Royal Oil Corp. v. Federal Trade
Comm., 262 F. (2d) 741 (1959).

§ 119-13.2. Labels required on sealed containers; oil to meet minimum specifications.—It shall be unlawful to offer for sale or sell or deliver in this State re-refined or re-processed oil, as hereinbefore defined, in a sealed container unless this container be labeled or bear a label on which shall be expressed the brand or trade name of the oil and the words “re-processed oil” in letters at least one-half inch high; the name and address of the person, firm, or corporation who has re-refined or re-processed said oil or placed it in the container; the Society of Automotive Engineers (S. A. E.) viscosity number; the net contents of the container expressed in U. S. liquid measure of quarts, gallons, or pints; which label has been registered and approved by the Gasoline and Oil Inspection Division of the Department of Agriculture; and that the oil in each sealed container shall meet the minimum specifications as hereinbefore described for each Society of Automotive Engineers (S. A. E.) viscosity number. (1953, c. 1137.)

Order of Federal Trade Commission Not in Conflict with This Section.—This section requires that containers of reclaimed used oil be clearly marked “Reprocessed Oil.” It does not prohibit the use of additional descriptive words, and where the Federal Trade Commission indicated that it was not the use of the word “reprocessed” which it considered deceptive, but rather the fail-

ure to make the additional specific disclosure that the reprocessed oil had been previously used, an order of the Commission prohibiting sale of the oil without disclosing its previous use was clearly not in conflict with the State’s requirement. *Royal Oil Corp. v. Federal Trade Comm.*, 262 F. (2d) 741 (1959).

§ 119-13.3. Violation a misdemeanor.—Any person, firm, or corporation violating any of the provisions of this article shall for each offense be guilty of a misdemeanor and punished by a fine of not less than one hundred dollars (\$100.00) or not more than five hundred dollars (\$500.00) or imprisoned for not more than one year, or both, in the discretion of the court. (1953, c. 1137.)

Cited in *Royal Oil Corp. v. Federal Trade Comm.*, 262 F. (2d) 741 (1959).

ARTICLE 3.

Gasoline and Oil Inspection.

§ 119-14. Title of article.—This article shall be known as the Gasoline and Oil Inspection Act. (1937, c. 425, s. 1.)

Cross Reference.—See § 105-441.

§ 119-15. “Gasoline” defined.—The term “gasoline” wherever used in this article shall be construed to mean refined petroleum naphtha which by its composition is suitable for use as a carburant in internal combustion engines. (1937, c. 425, s. 2.)

§ 119-16. “Motor fuel” defined.—“Motor fuel” shall be construed to mean all products commonly or commercially known or sold as gasoline, including casing-head or absorption or natural gasoline, benzol, or naphtha, regardless of their classification or uses, and any liquid prepared, advertised, offered for sale or sold for use as or commonly and commercially used as a fuel in internal combustion engines which, when subjected to distillation in accordance to the standard method of test for distillation of gasoline, naphtha, kerosene, and similar petroleum products (American Society of Testing Materials, Designation D-86), show not less than ten per centum recovered below three hundred forty-seven degrees Fahrenheit and not less than ninety-five per centum recovered below four hundred sixty-four degrees Fahrenheit. In addition to the above, any other volatile and inflammable liquid when sold or used to propel a motor vehicle on the highways shall be motor fuel. (1937, c. 425, s. 3.)

§ 119-16.1. “Kerosene” defined.—The term “kerosene” wherever used in this article, except to the extent otherwise provided in G. S. 119-16, shall include all petroleum oil free from water, glue and suspended matter and having flash

point not below 115°F., Tag Closed Tester A.S.T.M. D-56, sulphur content not exceeding 0.13% (A.S.T.M., D-90 Modified), distillation "end point" not higher than 572° Fahrenheit (A.S.T.M., D-86). The presence or absence of coloring matter shall in no way be determinative of whether a substance is kerosene within the meaning of this section. (1955, c. 1313, s. 7.)

§ 119-17. Inspection of kerosene, gasoline and other petroleum products provided for.—All kerosene used for illuminating or heating purposes and all gasoline used or intended to be used for generating power in internal combustion engines or otherwise sold or offered for sale, and all kerosene, benzine, naphtha, petroleum solvents, distillates, gas oil, furnace or fuel oil and all other volatile and inflammable liquids by whatever name known or sold and produced, manufactured, refined, prepared, distilled, compounded or blended for the purpose of generating power in motor vehicles for the propulsion thereof by means of internal combustion engines or which are sold or used for such purposes, and any and all substances or liquids which in themselves or by reasonable combination with others might be used for or as substitutes for motor fuel shall be subject to inspection, to the end that the public may be protected in the quality of petroleum products it buys, that the State's revenue may be protected, and that frauds, substitutions, adulterations and other reprehensible practices may be prevented. (1937, c. 425, s. 4.)

§ 119-18. Inspection fee; allotments for administration expenses.—For the purpose of defraying the expenses of enforcing the provisions of this article there shall be paid to the Commissioner of Revenue a charge of one-fourth of one per cent per gallon upon all kerosene, gasoline, and other products of petroleum used as motor fuel. The inspection tax shall be due and payable at the same time that the gasoline road tax is due and payable under the provisions of §§ 105-434 to 105-436, and payment shall be made concurrently with payment of said gasoline road tax, unless the Commissioner of Revenue shall by rule and regulation prescribe other methods for the collection of such tax. There shall, from time to time, be allotted by the Budget Bureau, from the inspection fees collected under authority of the inspection laws of this State, such sums as may be necessary to administer and effectively enforce the provisions of the inspection laws.

No county, city, or town shall impose any inspection charge, tax, or fee, in the nature of the charge prescribed by this section, upon kerosene, gasoline and other products of petroleum used as motor fuel. (1917, c. 166, s. 4; C. S., s. 4856; 1933, c. 544, s. 5; 1937, c. 425, s. 5.)

§ 119-19. Failure to report or pay tax; cancellation of license.—If any person shall at any time file a false report of the data or information required by law, or shall fail or refuse or neglect to file any report required by law, or to pay the full amount of the tax as required by law, the Commissioner of Revenue may forthwith cancel the license of such person issued under § 105-433, and notify such person in writing of such cancellation by registered mail to the last known address of such person appearing in the files of the Commissioner of Revenue. In the event that the license of any person shall be canceled by the Commissioner of Revenue as hereinbefore provided in this section, and in the event such person shall have paid to the State of North Carolina all the taxes due and payable by him under this article, together with any and all penalties accruing under any of the provisions of this article, then the Commissioner of Revenue shall cancel and surrender the bond theretofore filed by said person under § 105-433. (1933, c. 544, s. 10.)

§ 119-20: Repealed by Session Laws 1963, c. 1169, s. 6, effective July 1, 1963.

Cross Reference.—As to administrative, inspection fees levied under this chapter, penalty and remedy provisions applicable to see § 105-269.3.

§ 119-21. On failure to report, Commissioner may determine tax.—Whenever any person shall neglect or refuse to make and file any report as required by this article, or shall file an incorrect or fraudulent report, the Commissioner of Revenue shall determine after an investigation the number of gallons of kerosene oil and other motor fuel with respect to which the person has incurred liability under the tax laws of the State of North Carolina, and shall fix the amount of the taxes and penalties payable by the person under this article accordingly. In any action or proceeding for the collection of the inspection tax for kerosene oil or motor fuel and/or any penalties or interest imposed in connection therewith, an assessment by the Commissioner of Revenue of the amount of tax due, and/or interest and/or penalties due to the State, shall constitute prima facie evidence of the claim of the State; and the burden of proof shall be upon the person to show that the assessment was incorrect and contrary to law; and the Commissioner of Revenue may institute action therefor in the Superior Court of Wake County, regardless of the residence of such person or the place where the default occurred. (1933, c. 544, s. 12.)

§ 119-22. "Person" defined.—The word "person" as used in §§ 119-19 to 119-21 is hereby defined and declared to include and embrace not only the person, firm or corporation liable for the inspection tax, but also all his or its agents, servants and employees. (1933, c. 544, s. 13.)

§ 119-23. Administration by Commissioner of Agriculture; collection of fees by Department of Revenue and payment into State treasury; disposition of moneys by State Treasurer.—Gasoline and oil inspection fees or taxes shall be collected by, and reports relating thereto, shall be made to, the Department of Revenue. The administration of the gasoline and oil inspection law shall otherwise be administered by the Commissioner of Agriculture. All moneys received under the authority of this article shall be paid into the State treasury and the State Treasurer shall place to the credit of the "State Highway Fund" that proportion of said funds representing inspection fees collected on highway use motor fuels, as certified monthly to the State Treasurer by the Commissioner of Revenue, and the remainder of said funds shall be credited to the general fund. (1937, c. 425, s. 6; 1941, c. 36; 1949, c. 1167; 1963, c. 245.)

Editor's Note. — The 1949 amendment rewrote the former first sentence to appear as the present first two sentences. The amendatory act, which specifically amended certain statutes, provides: "The administration of the gasoline and oil inspection law is hereby transferred from the Department of Revenue to the Department of Agriculture. The collection of the gasoline and oil inspection fee or tax shall still be made by the Department of Revenue in the man-

ner in which it is now being collected. In order to effectuate the purposes of this act all statutes in which administrative duties relating to the gasoline and oil inspection law are imposed upon the Commissioner of Revenue are hereby amended so as to impose such duties upon the Commissioner of Agriculture."

The 1963 amendment, effective July 1, 1963, rewrote the last sentence.

§ 119-24. Report of operation and expenses to General Assembly.—The Commissioner of Revenue shall include in his report to the General Assembly an account of the operation and expenses of his phase of the gasoline and oil inspection law and the Commissioner of Agriculture shall include in his report to the General Assembly an account of his portion of the operation and expenses of the gasoline and oil inspection law. (1937, c. 425, s. 7; 1949, c. 1167.)

Editor's Note. — The 1949 amendment rewrote this section.

§ 119-25. Inspectors, clerks and assistants.—The Commissioner of Revenue and the Commissioner of Agriculture, respectively, shall appoint and employ such number of inspectors, clerks and assistants as may be necessary to administer and effectively enforce all the provisions of the gasoline and oil inspection law with the administration or enforcement of which each said Commissioner is charged.

All inspectors shall be bonded in the sum of one thousand dollars in the usual manner provided for the bonding of State employees, and the expense of such bonding shall be paid from the Gasoline and Oil Inspection Fund created by this article. Each inspector, before entering upon his duties, shall take an oath of office before some person authorized to administer oaths. Any inspector who, while in office, shall be interested directly or indirectly in the manufacture or vending of any illuminating oils or gasoline or other motor fuels shall be guilty of a misdemeanor, and upon conviction shall be fined not less than three hundred dollars, or be imprisoned for not less than three months nor more than twelve months, or both in the discretion of the court. (1937, c. 425, s. 8; 1949, c. 1167.)

Editor's Note. — The 1949 amendment rewrote the first sentence.

§ 119-26. Gasoline and Oil Inspection Board created; composition, appointment of members, etc.; expenses; powers generally; adoption of standards, etc.; sale of products not complying with standards; renaming, etc., of gasoline.—In order to more fully carry out the provisions of this article there is hereby created a Gasoline and Oil Inspection Board of five members, to be composed of the Commissioner of Agriculture, the Director of the Gasoline and Oil Inspection Division, and three members to be appointed by the Governor, who shall serve at his will. The Commissioner of Agriculture and the Director of the Gasoline and Oil Inspection Division shall serve without additional compensation. Other members of the Board shall each receive the sum of ten dollars for each day he attends a session of the Board and for each day necessarily spent in traveling to and from his place of residence, and he shall receive five cents a mile for the distance to and from Raleigh by the usual direct route for each meeting of the Board which he attends. These expenses shall be paid from the Gasoline and Oil Inspection fund created by this article. The duly appointed and acting Gasoline and Oil Inspection Board shall have the power, in its discretion, after public notice and provision for the hearing of all interested parties, to adopt standards for kerosene and one or more grades of gasoline based upon scientific tests and ratings and for each of the articles for which inspection is provided; to require the labeling of dispensing pumps or other dispensing devices, and to prescribe the forms therefor; to require that the label, name, or brand under which gasoline is thereafter to be sold be applied at the time of its first purchase within the State and to pass all rules and regulations necessary for enforcing the provisions of the laws relating to the transportation and inspection of petroleum products; provided, however, that the action of said Gasoline and Oil Inspection Board shall be subject to the approval of the Governor of the State; and provided further, that if the Gasoline and Oil Inspection Board should promulgate any regulation which requires that gasoline be labeled, named or branded at the time of its first sale in the State, that such regulation shall provide in addition that any subsequent owner may rename, rebrand, or relabel such gasoline if such subsequent owner first files with the Board a notice of intention to do so, said notice to contain information showing the original brand, name, label, the company or person from whom the gasoline has been or is to be purchased, the minimum specifications registered by the seller, the brand, name, or label that is to be given such gasoline and the minimum specifications of such gasoline as filed with the Board; provided, further, that no labeling, naming or branding of gasoline which may be required by the Gasoline and Oil Inspection Board under the provisions of this article, shall be construed as permitting gasoline to become the subject of fair trade contracts, as provided in G. S. 66-52. After the adoption and publication of said standards it shall be unlawful to sell or offer for sale or exchange or use in this State any products which do not comply with the standards so adopted. The said Gasoline and Oil Inspection Board shall, from time to time after a public hearing, have the right to amend, alter,

or change said standards. Three members of said Board shall constitute a quorum. (1937, c. 425, s. 9; 1941, c. 220; 1949, c. 1167; 1961, c. 961.)

Editor's Note. — The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue" in the first two sentences.

The 1961 amendment inserted in the fifth

sentence "to require that the label, name, or brand under which gasoline is thereafter to be sold be applied at the time of its first purchase within the State." It also inserted the last two provisos in the fifth sentence.

§ 119-27. Display of grade rating on pumps, etc.; sales from pumps or devices not labeled; sale of gasoline not meeting standard indicated on label.—In the event that the Gasoline and Oil Inspection Board shall adopt standards for grades of gasoline, at all times there shall be firmly attached to or painted on each dispensing pump or other dispensing device used in the retailing of gasoline a label stating that the gasoline contained therein is North Carolina grade. Any person, firm, partnership, or corporation who shall offer or expose for sale gasoline from any dispensing pump or other dispensing device which has not been labeled as required by this section, and/or offer and expose for sale any gasoline which does not meet the required standard for the grade indicated on the label attached to the dispensing pump or other dispensing device, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than five hundred dollars and be imprisoned for not more than six months, or either, in the discretion of the court, and the gasoline offered or exposed for sale shall be confiscated.

The gasoline and oil inspectors shall have the authority to immediately seize and seal, to prevent further sales, any dispensing pump or other dispensing device from which gasoline is offered or exposed for sale in violation of or without complying with the provisions of this article. Provided, however, that this section shall not be construed to permit the destruction of any gasoline which may be blended or re-refined or offered for sale as complying with the legal specifications of a lower grade except under order of the court in which an indictment is brought for violation of the provisions of this article. Provided, further, that gasoline that has been confiscated and sealed by the gasoline and oil inspectors for violation of the provisions of this article shall not be offered or exposed for sale until the Director of the Gasoline and Oil Inspection Division has been fully satisfied that the gasoline offered or exposed for sale has been blended or re-refined or properly labeled to meet the requirements of this article and the owners of said gasoline have been notified in writing of this fact by said Director and, provided, further, that the permitting of blending, re-refining or properly labeling of confiscated gasoline shall not be construed to in any manner affect any indictment which may be brought for violation of this section. (1937, c. 425, s. 11; 1939, c. 276, s. 1; 1941, c. 220.)

Editor's Note.—The 1939 amendment added the second paragraph.

§ 119-28. Regulations for sale of substitutes.—All materials, fluids, or substances offered or exposed for sale, purporting to be substitutes for or motor fuel improvers, shall, before being sold, exposed or offered for sale, be submitted to the Commissioner of Agriculture for examination and inspection, and shall only be sold or offered for sale when properly labeled with a label, the form and contents of which label has been approved by the said Commissioner of Agriculture in writing. (1937, c. 425, s. 12; 1949, c. 1167.)

Editor's Note.—The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue."

§ 119-29. Rules and regulations of Board available to interested parties.—It shall be the duty of the Commissioner of Agriculture to make available for all

interested parties the rules and regulations adopted by the Gasoline and Oil Inspection Board for the purpose of carrying into effect the laws relating to the inspection and transportation of petroleum products. (1937, c. 425, s. 13; 1949, c. 1167.)

Editor's Note.—The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue."

§ 119-30. Establishment of laboratory for analysis of inspected products.—The Commissioner of Agriculture is authorized to provide for the analysis of samples of inspected articles by establishing a laboratory under the Gasoline and Oil Inspection Division for the analysis of inspected products. (1937, c. 425, s. 14; 1949, c. 1167.)

Editor's Note.—The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue."

§ 119-31. Payment for samples taken for inspection.—The gasoline and oil inspectors shall pay at the regular market price, at the time the sample is taken, for each sample obtained for inspection purposes when request for payment is made: Provided, however, that no payment shall be made any retailer or distributor unless said retailer or distributor or his agent shall sign a receipt furnished by the Commissioner of Agriculture showing that payment has been made as requested. (1937, c. 425, s. 15; 1949, c. 1167.)

Editor's Note.—The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue."

§ 119-32. Powers and authority of inspectors.—The gasoline and oil inspectors shall have the right of access to the premises and records of any place where petroleum products are stored for the purpose of examination, inspection and/or drawing of samples, and said inspectors are hereby vested with the authority and powers of peace and police officers in the enforcement of motor fuel tax and inspection laws throughout the State, including the authority to arrest, with or without warrants, and take offenders before the several courts of the State for prosecution or other proceedings, and seize or hold or deliver to the sheriff of the proper county all motor or other vehicles and all containers used in transporting motor fuels and/or other liquid petroleum products in violation of or without complying with the provisions of this article or the rules, regulations or requirements of the Commissioner of Agriculture and/or the Gasoline and Oil Inspection Board and also all motor fuels contained therein. Said inspectors shall have power and authority on the public highways or any other place to stop and detain for inspection and investigation any vehicle containing any motor fuel and/or other liquid petroleum products in excess of one hundred gallons or commonly used in the transportation of such fuels and the driver or person in charge thereof, and to require the production by such driver or person in charge of all records, documents and papers required by law to be carried and exhibited by persons in charge of vehicles engaged in transporting such fuels; and whenever said inspectors shall find or see any person engaged in handling, selling, using, or transporting any fuels in violation of any of the provisions of the motor fuel tax or inspection laws of this State, or whenever any such person shall fail or refuse to exhibit to said inspectors, upon demand therefor, any records, documents or papers required by law to be kept subject to inspection or to be exhibited by such person, said person shall be guilty of a misdemeanor, and it shall be the duty of said inspectors to immediately arrest such violator and take him before some proper peace officer of the county in which the offense was committed and institute proper prosecution. (1937, c. 425, s. 16; 1949, c. 1167.)

Editor's Note.—The 1949 amendment for "Commissioner of Revenue" near the substituted "Commissioner of Agriculture" end of the first sentence.

§ 119-33. Investigation and inspection of measuring equipment; devices calculated to falsify measures.—The gasoline and oil inspectors shall be required to investigate and inspect the equipment for measuring gasoline, kerosene, lubricating oil, and other liquid petroleum products. Said inspectors shall be under the supervision of the Commissioner of Agriculture, and are hereby vested with the same power and authority now given by law to inspectors of weights and measures, insofar as the same may be necessary to effectuate the provisions of this article. The rules, regulations, specifications and tolerance limits as promulgated by the National Conference of Weights and Measures, and recommended by the United States Bureau of Standards, shall be observed by said inspectors insofar as they apply to the inspection of equipment used in measuring gasoline, kerosene, lubricating oil and other petroleum products. Inspectors of weights and measures appointed and maintained by the various counties and cities of the State shall have the same power and authority given by this section to inspectors under the supervision of the Commissioner of Agriculture. In all cases where it is found, after inspection, that the measuring equipment used in connection with the distribution of such products is inaccurate, the inspector shall condemn and seize all incorrect devices which in his best judgment are not susceptible of satisfactory repair, but such as are incorrect, and in his best judgment may be repaired, he shall mark or tag as "condemned for repairs" in a manner prescribed by the Commissioner of Agriculture. After notice in writing the owners or users of such measuring devices which have been condemned for repairs shall have the same repaired and corrected within ten days, and the owners and/or users thereof shall neither use nor dispose of said measuring devices in any manner, but shall hold the same at the disposal of the gasoline and oil inspector. The inspector shall confiscate and destroy all measuring devices which have been condemned for repairs and have not been repaired as required by this article. The gasoline and oil inspectors shall officially seal all dispensing pumps or other dispensing devices found to be accurate on inspection, and if, upon inspection at a later date, any pump is found to be inaccurate and the seal broken, the same shall constitute prima facie evidence of intent to defraud by giving inaccurate measure, and the owner and/or user thereof shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred dollars nor more than one thousand dollars, or be imprisoned for not less than three months, or both, in the discretion of the court. Any person who shall remove or break any seal placed upon said measuring and/or dispensing devices by said inspectors until the provisions of this section have been complied with shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars nor more than two hundred dollars, or be imprisoned for not less than thirty days nor more than ninety days, or both, in the discretion of the court. Any person, firm, or corporation who shall sell or have in his possession for the purpose of selling or using any measuring device to be used or calculated to be used to falsify any measure shall be guilty of a misdemeanor, and shall be fined or imprisoned in the discretion of the court. (1937, c. 425, s. 17; 1949, c. 1167.)

Editor's Note.—The 1949 amendment first five sentences of this section and struck out the words "Commissioner of Revenue" wherever they appeared in the inserted in lieu thereof the words "Commissioner of Agriculture."

§ 119-34. Responsibility of retailers for quality of products.—The retail dealer shall be held responsible for the quality of the petroleum products he sells or offers for sale: Provided, however, that the retail dealer shall be released if the results of analysis of a sealed sample taken in a manner prescribed by the Commissioner of Agriculture at the time of delivery, and in the presence of the distributor or his agent, show that the product delivered by the distributor was of inferior quality. It shall be the duty of the distributor or his agent to assist in sampling the product delivered. (1937, c. 425, s. 18; 1949, c. 1167.)

Editor's Note.—The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue."

§ 119-35. Adulteration of products offered for sale.—It shall be unlawful for any person, firm, or corporation who has purchased gasoline or other liquid motor fuel upon which a road tax has been paid to in anywise adulterate the same by the addition thereto of kerosene or any other liquid substance and sell or offer for sale the same. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred dollars nor more than one thousand dollars or be imprisoned for not more than twelve months, or both, in the discretion of the court. (1937, c. 425, s. 19.)

§ 119-36. Certified copies of official tests admissible in evidence.—A certified copy of the official test of the analysis of any petroleum product, under the seal of the Commissioner of Agriculture, shall be admissible as evidence of the fact therein stated in any of the courts of this State on the trial of any issue involving the qualities of said product. (1937, c. 425, s. 20; 1949, c. 1167.)

Editor's Note.—The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue."

§ 119-37. Retail dealers required to keep copies of invoices and delivery tickets.—Every person, firm, or corporation engaged in the retail business of dispensing gasoline and/or other petroleum products to the public shall keep on the premises of said place of business, for a period of one year, duplicate original copies of invoices or delivery tickets of each delivery received, showing the name and address of the party to whom delivery is made, the date of delivery, the kind and amount of each delivery received, and the name and address of the distributor. Each delivery ticket or invoice shall be signed by the retailer or his agent and the distributor or his agent. Such records shall be subject to inspection at any time by the gasoline and oil inspectors. (1937, c. 425, s. 21.)

§ 119-38. Prosecution of offenders.—All prosecutions for fines and penalties under the provisions of this article shall be by indictment in a court of competent jurisdiction in the county in which the violation occurred. (1937, c. 425, s. 22.)

§ 119-39. Violation a misdemeanor.—Unless another penalty is provided in this article, any person violating any of the provisions of this article or any of the rules and regulations of the Commissioner of Revenue or the Commissioner of Agriculture and/or the Gasoline and Oil Inspection Board shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one thousand dollars or be imprisoned for not more than twelve months, or both, in the discretion of the court. (1937, c. 425, s. 23; 1949, c. 1167.)

Editor's Note.—The 1949 amendment inserted the words "or the Commissioner of Agriculture."

§ 119-40. Manufacturers to notify Commissioner of shipments.—Where oil or gasoline is shipped in tanks, cars, or other large containers, the manufacturer or jobber shall give notice to the Commissioner of Agriculture of their shipment, with the name and address of the person, company, or corporation to whom it is sent and the number of gallons, on the day the shipment is made. (1917, c. 166, s. 4; C. S., s. 4856; 1933, c. 214, s. 8; 1949, c. 1167.)

Editor's Note.—The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue."

§ 119-41. Persons engaged in transporting are subject to inspection laws.—The owner or operator of any motor vehicle using the highways of this State or the owner or operator of any boat using the waters of this State transporting into, out of or between points in this State any gasoline or liquid motor fuel taxable in this State and/or any liquid petroleum product that is or may here-

after be made subject to inspection laws of this State shall make application to the Commissioner of Agriculture on forms to be provided by him for a liquid fuel carrier's permit. Upon receipt of said application, together with a signed agreement to comply with the provisions of the act and/or acts relating to the transportation of petroleum products subject to the motor fuel tax and/or inspection laws, the Commissioner of Agriculture shall, without any charge therefor, issue a numbered liquid fuel carrier's permit to the owner or operator of each motor vehicle or boat intended to be used in such transportation. Said numbered liquid fuel carrier's permit shall show the motor number and license number of the motor vehicle and number or name of boat, and shall be prominently displayed on the motor vehicle or boat at all times. No person shall haul, transport, or convey any motor fuel over any of the public highways of this State except in vehicles plainly and visibly marked on the rear thereof with the word "Gasoline" in plain letters of not less than six inches high and of corresponding appropriate width, together with the name and address of the owner or lessee of the vehicle in letters of not less than four inches high: Provided, however, that this section shall not be construed to include the carrying of motor fuels in the supply tank of vehicles which is regularly connected with the carburetor of the engine of the vehicle except when said fuel supply tank shall have a capacity of more than one hundred gallons. This section shall not be construed to include the carrying of motor fuel in the supply tank which is regularly connected with the carburetor of the engine of any vehicle operated by franchise carriers engaged solely in the transportation of passengers to, from and between points in North Carolina. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than twenty-five dollars. (1937, c. 425, s. 24; 1939, c. 276, s. 2; 1949, c. 1167; 1951, c. 370.)

Editor's Note.—The 1939 amendment inserted the next to last sentence.

The 1949 amendment substituted "Commissioner of Agriculture" for "Commis-

sioner of Revenue" in the first two sentences.

The 1951 amendment inserted in the fourth sentence the words "or lessee."

§ 119-42. Persons engaged in transporting required to have in possession an invoice, bill of sale or bill of lading.—Every person hauling, transporting or conveying into, out of, or between points in this State any motor fuel and/or any liquid petroleum product that is or may hereafter be made subject to the inspection laws of this State over either the public highways or waterways of this State, shall, during the entire time he is so engaged, have in his possession an invoice, or bill of sale, or bill of lading showing the true name and address of the person from whom he has received the motor fuel and/or other liquid petroleum products, the kind, and the number of gallons so originally received by him, and the true name and address of every person to whom he has made deliveries of said motor fuel and/or other liquid petroleum products or any part thereof and the number of gallons so delivered to each said person. Such person engaged in transporting said motor fuels and/or other petroleum products shall, at the request of any agent of the Commissioner of Agriculture, exhibit for inspection such papers or documents immediately, and if said person fails to produce said papers or documents or if, when produced, they fail to clearly disclose said information, the agent of the Commissioner of Agriculture shall hold for investigation the vehicle and contents thereof. If investigation shows that said motor fuels and/or other petroleum products are being transported in violation of or without compliance with the motor fuel tax and/or inspection laws of this State such fuels and/or other petroleum products and the vehicle used in the transportation thereof are hereby declared common nuisances and contraband, and shall be seized and sold and the proceeds shall go to the common school fund of the State: Provided, however, that this article shall not be construed to include the carrying of motor fuel in the supply tank of vehicles which is regularly connected with the carburetor of the engine of the vehicle, except when said fuel supply

tank shall have a capacity of more than one hundred gallons: And, provided further, that this section shall not be construed to include the carrying of motor fuel in the supply tank which is regularly connected with the carburetor of the engine of any vehicle operated by franchise carriers engaged solely in the transportation of passengers to, from and between points in North Carolina. (1937, c. 425, s. 25; 1939, c. 276, s. 3; 1949, c. 1167.)

Editor's Note.—Prior to the 1939 amendment the last proviso read "this section shall not apply to franchise carriers."

The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue" in the second sentence.

§ 119-43. Display required on containers used in making deliveries.—Every person delivering at wholesale or retail any gasoline in this State shall deliver the same to the purchaser only in tanks, barrels, casks, cans, or other containers having the word "Gasoline" or the name of such other like products of petroleum, as the case may be, in English, plainly stenciled or labeled in colors to meet the requirements of the regulations adopted by the Commissioner of Agriculture and/or the Gasoline and Oil Inspection Board. Such dealers shall not deliver kerosene oil in any barrel, cask, can, or other container which has not been stenciled or labeled as hereinbefore provided. Every person purchasing gasoline for use or sale shall procure and keep the same only in tanks, barrels, casks, cans, or other containers stenciled or labeled as hereinbefore provided: Provided, that nothing in this section shall prohibit the delivery of gasoline by hose or pipe from a tank directly into the tank or any automobile or any other motor vehicle: Provided further, that in case gasoline or other inflammable liquid is sold in bottles, cans, or packages of not more than one gallon for cleaning and other similar purposes, the label shall also bear the words "Unsafe when exposed to heat or fire". (1937, c. 425, s. 26; 1939, c. 276, s. 4; 1949, c. 1167.)

Editor's Note.—The 1939 amendment struck out a former provision exempting franchise carriers. And the 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue" near the end of the first sentence.

Violation of this section is a misdemeanor. Reynolds v. Murph, 241 N. C. 60, 84 S. E. (2d) 273 (1954).

And is negligence per se. Reynolds v. Murph, 241 N. C. 60, 84 S. E. (2d) 273 (1954).

Allegations Sufficient to Allege Concurrent Negligence of Defendants in Failing to Label Jug of Gasoline.—See Reynolds v. Murph, 241 N. C. 60, 84 S. E. (2d) 273 (1954).

§ 119-44. Registration of exclusive industrial users of naphthas and coal tar solvents.—All persons who are exclusive industrial users of naphtha and coal tar solvents, and who are not engaged in the business of selling motor fuel, may register with the Commissioner of Agriculture as an exclusive industrial user of naphthas and coal tar solvents upon the presentation of satisfactory evidence of such fact to said Commissioner and the filing of a surety bond in approved form not to exceed the sum of one thousand dollars. Such registration, properly evidenced by the issuance of a certificate of registration as an exclusive industrial user of naphthas and coal tar solvents, will thereafter, and until such time as certificate of registration may be canceled by the Commissioner of Agriculture, permit licensed distributors of motor fuel in this State to sell naphthas and coal tar solvents to the holder of such certificate of registration upon the proper execution of an official certificate of industrial use in lieu of the collection of the motor fuel tax: Provided, however, that no licensed distributor of motor fuel shall sell gasoline tax free under the conditions of this article: Provided, further, that the rules and regulations adopted by the Commissioner of Agriculture for the proper administration and enforcement of this article shall be strictly adhered to by the holder of the certificate of registration under penalty of cancellation of such certificate for violation of or nonobservance of such rules. (1937, c. 425, s. 27; 1949, c. 1167.)

Editor's Note.—The 1949 amendment substituted "Commissioner of Agriculture" for "Commissioner of Revenue."

§ 119-45. **Certain laws adopted as part of article.**—Sections 119-1 through 119-5 and §§ 119-7 through 119-13 are hereby made a part of this article. (1937, c. 425, s. 28.)

§ 119-46. **Charges for analysis of samples.**—The Commissioner of Revenue is hereby authorized to fix and collect such charges as he may deem adequate and reasonable for any analysis made by the Gasoline and Oil Inspection Division of any sample submitted by any person, firm, association or corporation other than samples submitted by the gasoline and oil inspectors in the performance of the duties required of said inspectors under this article: Provided, however, that no charge shall be made for the analysis of any sample submitted by any municipal, county, State or federal official when the results of such analyses are necessary for the performance of his official duties. All moneys collected for such analyses shall be paid into the State treasury to the credit of the Gasoline and Oil Inspection Fund. (1937, c. 425, s. 29.)

§ 119-47. **Inspection of fuels used by State.**—The Gasoline and Oil Inspection Division is hereby authorized, upon request of the proper State authority, to inspect, analyze, and report the result of such analysis of all fuels purchased by the State of North Carolina for the use of all departments and institutions. (1937, c. 153.)

ARTICLE 4.

Liquefied Petroleum Gases.

§ 119-48. **Purpose; definition.**—It is the purpose of this article to provide for the adoption and promulgation of a code of safety, and such rules and regulations setting forth minimum general standards of safety for the design, construction, location, installation, and operation of the equipment used in handling, storing, measuring, transporting, distributing and utilizing liquefied petroleum gases, and to provide for compliance therewith; to promote and regulate the compliance of suppliers and consumers with the code, the laws, rules and regulations enacted in pursuance of safety, to provide for administration and enforcement of the code, laws, rules and regulations. The term "liquefied petroleum gas" as used in this article shall mean and include any material which is composed predominately of any of the following: Hydrocarbon, or mixtures of the same; propane, propylene, butanes (normal butanes or isobutane), butylenes. (1955, c. 487; 1959, c. 796, s. 1; 1961, c. 1072.)

Editor's Note.—The 1961 act setting forth this article repealed the former article entitled "Equipment for Handling, etc., Liquefied Petroleum Gases" and consisting of §§ 119-48 through 119-54.

The former article was derived from Session Laws 1947, c. 822, ss. 1 to 5, as amended by Session Laws 1949, c. 1294, Session Laws 1953, c. 1232, and Session Laws 1955, c. 487.

§ 119-49. **Minimum standards adopted; power of Board of Agriculture to make changes or additions; regulation by political subdivisions.**—The standards as set forth in Pamphlet No. 58 of the National Fire Protection Association entitled, THE STORAGE AND HANDLING OF LIQUEFIED PETROLEUM GASES dated May, 1961, and Pamphlet No. 54 of the National Fire Protection Association entitled, INSTALLATION OF GAS APPLIANCES AND GAS PIPING dated June, 1959, and the rules and regulations promulgated by the North Carolina State Board of Agriculture are hereby adopted as if set forth herein, as safety standards for the design, construction, location, installation and operation of equipment and facilities used in handling, storing, and distribution of liquefied petroleum gas, subject, always, to the power and authority of the North Carolina State Board of Agriculture to adopt, reject, or to add to any provisions set forth in said pamphlets as above entitled after a public hearing held upon fifteen (15) days' notice. After adoption by the Board of Agricul-

ture of such provision or provisions as it may consider necessary in furtherance of the purposes of this article, such provision or provisions shall become a part of this safety code to the same extent as if written in this article.

Any municipality or political subdivision may adopt and enforce a safety code dealing with the handling of liquefied petroleum gas, which code shall conform with the code adopted by the State Board of Agriculture, and the inspection service rendered by such municipality or political subdivision shall conform to the requirements of the inspection service rendered by the State Board of Agriculture in the enforcement of this article. (1955, c. 487; 1959, c. 796, s. 2; 1961, c. 1072; 1963, c. 671.)

Editor's Note.—The 1963 amendment substituted "May, 1961" for "June, 1960" near the beginning of this section.

Violation of Section as Contributory Negligence.—The violation of this section by the driver of a truck transporting liquid petroleum gas cannot be asserted as con-

tributory negligence on the part of such driver in his action to recover for burns received as a result of a collision when defendants do not plead a violation of the statute or the applicable safety regulations. *Rodgers v. Thompson*, 256 N. C. 265, 123 S. E. (2d) 785 (1962).

§ 119-50. Registration of dealers; liability insurance or bond required.—Any person, firm, or corporation engaged in or who desires to engage in the business of selling or otherwise dealing in liquefied petroleum gas which requires handling, storing, measuring, transporting or distributing liquefied petroleum gas, or who is engaged in or desires to engage in the business of installing, servicing, repairing, adjusting, connecting, or disconnecting containers, equipment or appliances which use liquefied petroleum gas, shall, within sixty (60) days after June 21, 1961, and annually thereafter, on or before January 1 of each year, register with the Commissioner of Agriculture of North Carolina on a form or forms to be furnished by the Commissioner of Agriculture; such form or forms shall give the name and address of the person, firm, or corporation, and the place or places of and the type or types of business of such registrant, and such other pertinent information as the Commissioner may deem necessary; provided, however, that the provisions of this section shall not apply to a person, firm, or corporation who retails liquefied petroleum gas in containers of less than fifty (50) pounds water capacity only which retailing does not involve the filling of such containers.

Any person, firm, or corporation which is engaged in, or which desires to engage in the business of selling, handling, storing, measuring, transporting, or distributing liquefied petroleum gas; or which shall install, service, repair, adjust, connect, or disconnect containers, equipment, or appliances which use liquefied petroleum gas, shall certify, under oath on the same form of registration as required by this section that the person, firm, or corporation applying for registration has a copy of Pamphlet No. 58 of the National Fire Protection Association, and a copy of Pamphlet No. 54 of the National Fire Protection Association, and a copy of the rules and regulations adopted by the North Carolina State Board of Agriculture, and that the said person, firm, or corporation has read and is familiar with the provisions thereof.

Such applicant shall obtain and maintain product liability and general comprehensive insurance of twenty-five thousand dollars (\$25,000.00) for bodily injury to, or death of, one person in any one accident, and subject to said limit for one person, fifty thousand dollars (\$50,000.00) because of bodily injury to, or death of, two or more persons in any one accident, and twenty-five thousand dollars (\$25,000.00) because of injury to, or destruction of, property of others in any one accident; or shall in lieu of said insurance file and maintain a bond in a form satisfactory to the commissioner which provides protection for the public in the same amounts and to the same extent as said insurance. (1955, c. 487; 1961, c. 1072.)

§ 119-51. Administration of article; rules and regulations given force and effect of law.—It shall be the duty of the Commissioner of Agriculture to administer all the provisions of this article and all the rules and regulations made and promulgated under this article relating to the handling, odorizing, storing, measur-

ing, transporting, distributing, and utilizing liquefied petroleum gases; to investigate for violations of this article and the rules and regulations adopted pursuant to the provisions thereof, and to prosecute violations of this article or of such rules and regulations adopted as hereinabove set forth. It is specifically provided that the rules and regulations of the Board of Agriculture adopted in conformity with this article shall have the force and effect of law, and that violations of said rules and regulations shall be misdemeanors, punishable as hereinafter provided. (1955, c. 487; 1961, c. 1072.)

§ 119-52. Unlawful acts.—It shall be unlawful for any person, firm, or corporation to handle, store, or distribute liquefied petroleum gas contrary to and in violation of the uniform safety code adopted by the Board of Agriculture, or the rules and regulations of the said board, adopted under the authority of this article; it shall be unlawful to sell any gas burning appliance designed and/or built for domestic use which has not been approved by the American Gas Association, Inc., or other underwriting laboratory approved by the Commissioner of Agriculture, or by the Commissioner of Agriculture; or to install any unvented heating appliance in a so-called trailer house, or to install unvented space heating appliances in a sleeping room that has an input of over 30 BTU per cubic feet of enclosure. It shall be unlawful for any person, firm, or corporation to fill a consumer tank or container in excess of 85 per cent of its water capacity, or to fill a tank or container on the premises of a consumer that is not equipped with a "fill tube" or gauge, except that said tank or container may be filled by weight, provided the tank or container is weighed before and after filling and a ticket showing gross tare and net weight is given to the consumer; or to disconnect an appliance from a gas supply line without capping or plugging said line before leaving premises; or to turn on the gas after re-establishing an interrupted service without first having checked and closed all gas outlets; or to install, maintain or transport a gas tank or container filled with gas that is not equipped with safety relief connected directly into the vapor space of same.

Every supply tank or container with its regulating equipment connected in a service system, shall be identified as long as it is in service by the supplier with an attached tag, label, or marking which shall show the name of the person, firm, or corporation who is supplying liquefied petroleum gas to said system; and it shall be unlawful for any person, firm, or corporation other than such supplier or owner of system, to disconnect, or to interrupt, or to fill said system with liquefied petroleum gas without the consent of the said supplier. However, when some other registered supplier is requested by the consumer to connect his service and is given permission by the consumer to connect service, the new supplier shall notify former supplier before disconnecting former service, and the connection of his own service, and shall cap or plug all disconnected equipment outlets and leave said equipment in condition consistent with the safety code adopted by this article.

It shall be unlawful for any person, firm, or corporation to violate any of the provisions of this article, or to violate any of the rules and regulations established under the authority of this article by the Board of Agriculture. (1955, c. 487; 1959, c. 796, s. 3; 1961, c. 1072.)

§ 119-53. Penalty.—Any person, firm, or corporation violating any of the provisions of this article, or any of the rules and regulations made and promulgated in accordance with the provisions of this article, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by fine or imprisonment, or both, in the discretion of the court. (1955, c. 487; 1961, c. 1072.)

Chapter 120.
General Assembly.

Article 1.

Apportionment of Members; Compensation and Allowances.

Sec.

- 120-1. Senators.
- 120-2. House of Representatives.
- 120-3. Payment in installments or upon per diem basis; extra sessions.
- 120-3.1. Subsistence and travel allowances for members and presiding officers.
- 120-4. [Repealed.]

Article 2.

Duty and Privilege of Members.

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Article 3.

Contests.

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- 120-13. [Repealed.]

Article 5.

Investigating Committees.

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Article 6A.

Legislative Council.

Sec.

- 120-30.1 Creation; appointment of members; members ex officio.
- 120-30.2. Time of appointments; terms of office.
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Article 7.

Employees.

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Article 8.

Preservation and Protection of Furniture and Fixtures.

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Article 9.

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- 120-40. Lobbying defined; registration of lobbyists.
- 120-41. Legislative docket for registration.
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Article 10.**Influencing Public Opinion
or Legislation.**

Sec.

120-48. Registration of persons and organizations engaged principally in influencing public opinion or legislation.

120-49. Information to be shown on docket.
120-50. Docket kept by Secretary of State; record open to public.

Sec.

120-51. Certain localized activities exempted.

120-52. Failure to comply with article made misdemeanor.

120-53. Time for registration by persons presently engaged in regulated activities.

120-54. Annual registration required.

120-55. Exemption of newspapers, radio, political candidates, etc.

ARTICLE 1.*Apportionment of Members; Compensation and Allowances.*

§ 120-1. Senators.—Until another apportionment of the State shall be had in accordance with the terms of the Constitution and laws of North Carolina, the Senate shall be composed of fifty members, elected from districts constituted as follows:

First District—Bertie, Camden, Chowan, Currituck, Gates, Hertford, Pasquotank, and Perquimans counties shall elect two senators.

Second District—Beaufort, Dare, Hyde, Martin, Pamlico, Tyrrell, and Washington shall elect two senators.

Third District—Northampton, Vance, and Warren shall elect one senator.

Fourth District—Edgecombe and Halifax shall elect two senators.

Fifth District—Pitt shall elect one senator.

Sixth District—Franklin, Nash, and Wilson shall elect two senators.

Seventh District—Carteret, Craven, Greene, Jones, Lenoir, and Onslow shall elect two senators.

Eighth District—Johnston and Wayne shall elect two senators.

Ninth District—Duplin, New Hanover, Pender, and Sampson shall elect two senators.

Tenth District—Bladen, Brunswick, Columbus, and Cumberland shall elect two senators.

Eleventh District—Robeson shall elect one senator.

Twelfth District—Harnett, Hoke, Moore, and Randolph shall elect two senators.

Thirteenth District—Chatham, Lee, and Wake shall elect two senators.

Fourteenth District—Durham, Granville, and Person shall elect two senators.

Fifteenth District—Caswell and Rockingham shall elect one senator.

Sixteenth District—Alamance and Orange shall elect one senator.

Seventeenth District—Guilford shall elect one senator.

Eighteenth District—Davidson, Montgomery, Richmond, and Scotland shall elect two senators.

Nineteenth District—Anson, Stanly, and Union shall elect two senators.

Twentieth District—Mecklenburg shall elect one senator.

Twenty-first District—Cabarrus and Rowan shall elect two senators: At the time of holding primary election for nomination of State officers, as provided in chapter one hundred sixty-three, the candidates of the several political parties for one of the senators from said twenty-first district shall be nominated by the respective electors of the several political parties of Rowan County, and the candidates for the other senator from said twenty-first district shall be nominated by the respective electors of the several political parties of Cabarrus County.

Twenty-second District—Forsyth shall elect one senator.

Twenty-third District—Stokes and Surry shall elect one senator.

Twenty-fourth District—Davie, Wilkes and Yadkin shall elect one senator.

Twenty-fifth District—Catawba, Iredell, and Lincoln shall elect two senators.

Twenty-sixth District—Gaston shall elect one senator.

Twenty-seventh District—Cleveland, McDowell, and Rutherford shall elect two senators.

Twenty-eighth District—Alexander, Burke, and Caldwell shall elect one senator.

Twenty-ninth District—Alleghany, Ashe, and Watauga shall elect one senator.

Thirtieth District—Avery, Madison, Mitchell, and Yancey shall elect one senator.

Thirty-first District—Buncombe shall elect one senator.

Thirty-second District—Haywood, Henderson, Jackson, Polk, and Transylvania shall elect two senators.

Thirty-third District—Cherokee, Clay, Graham, Macon, and Swain shall elect one senator. (Code, s. 2844; Rev., s. 4398; 1911, c. 150; C. S., s. 6087; 1921, c. 161; 1941, c. 225.)

Editor's Note.—Public Laws 1941, c. 225, from which this section was codified specifically repealed § 6087 of volume three of the Consolidated Statutes, which showed the former law as changed by the 1921 amendment.

§ 120-2. House of Representatives.—Until the General Assembly of North Carolina shall make another apportionment as provided by the Constitution and laws of North Carolina, the House of Representatives shall be composed of members elected from the counties of the State in the following manner, to wit:

The county of Mecklenburg shall elect five members; the county of Guilford shall elect four members; the counties of Cumberland, Forsyth and Wake shall elect three members each; the counties of Alamance, Buncombe, Durham, Gaston, Onslow, Robeson and Rowan shall elect two members each; the counties of Alexander, Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Brunswick, Burke, Cabarrus, Caldwell, Camden, Carteret, Caswell, Catawba, Chatham, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Currituck, Dare, Davidson, Davie, Duplin, Edgecombe, Franklin, Gates, Graham, Granville, Greene, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Mitchell, Montgomery, Moore, Nash, New Hanover, Northampton, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Randolph, Richmond, Rockingham, Rutherford, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Tyrrell, Union, Vance, Warren, Washington, Watauga, Wayne, Wilkes, Wilson, Yadkin, and Yancey shall elect one member each. (Code, s. 2845; Rev., s. 4399; 1911, c. 151; C. S., s. 6088; 1921, c. 144; 1941, c. 112; 1961, c. 265.)

Editor's Note.—Public Laws 1941, c. 112, from which this section was codified, specifically repealed § 6088 of the Consolidated Statutes of 1919 and the 1921 amendment. The 1961 amendment rewrote this section.

§ 120-3. Payment in installments or upon per diem basis; extra sessions.—The pay of the members and presiding officers for a regular session of the General Assembly as provided in article 2 of § 28 of the Constitution of North Carolina may be paid in installments, or upon a per diem basis, as asked for by the several members and presiding officers; provided, that in no instance shall installments or per diem amount to more than \$15.00 per day for the members and \$20.00 per day for the two presiding officers for the number of days the General Assembly has been in session, and the total pay of the presiding officers and members at a regular session shall in no case exceed \$1800.00 for each presiding officer and \$1,350.00 for each member of both houses. And, provided further, that the pay for an extra session of the General Assembly shall be \$20.00 per day for presiding officers and \$15.00 per day for members for a period not to exceed 25 days. (1929, c. 2, s. 1; 1951 c. 23, s. 1.)

Editor's Note.—The 1951 amendment rewrote this section.

§ 120-3.1. Subsistence and travel allowances for members and presiding officers.—(a) In addition to the compensation fixed by the Constitution for their

services, members and presiding officers of the General Assembly shall also receive, while engaged in legislative duties, such subsistence and travel allowances as are limited and prescribed by subsections (b) and (c) of this section.

(b) The travel allowance authorized in subsection (a) of this section shall be paid the members and presiding officers of the General Assembly while coming to the city of Raleigh and returning to their respective homes, the distance to be computed by the usual route of public travel. Such travel allowance shall be paid, upon proper certification, only for travel expense actually incurred. This travel allowance shall be limited to a maximum of one (1) round trip each week during each regular or special session of the General Assembly, and shall be that established by law for members of State boards and commissions generally.

(c) In addition to the travel allowance authorized in subsection (b) of this section, during any session of the General Assembly, whenever any member or presiding officer of either house of the General Assembly is directed by any committee of either house or by either house of the General Assembly to perform any legislative duties outside the city of Raleigh, then in such event such member or presiding officer shall be paid travel and subsistence allowances while engaged in such duties. Such travel allowance shall not exceed that established by law for State boards and commissions generally. No travel allowance shall be paid members and presiding officers of the General Assembly while they are engaged in legislative duties within the limits of the city of Raleigh. Subsistence allowance for expenses incurred in connection with their duties in the General Assembly in the sum of twelve dollars (\$12.00) per day shall be paid members and presiding officers for each day of the period during which the General Assembly remains in session.

(d) Reimbursement for travel and subsistence allowances shall be paid members and presiding officers of the General Assembly only after certification by the claimant as to the correctness thereof on forms prescribed and furnished by the Budget Bureau. Claims for reimbursement for travel and subsistence shall be paid at such times as may be prescribed by the Budget Bureau. (1957, c. 8; 1959, c. 939; 1961, c. 889.)

Editor's Note.—The 1959 amendment rewrote the second sentence of subsection (b) to appear as the present second and third sentences.

The 1961 amendment, effective Feb. 8, 1961, changed the amount in the last sentence of subsection (c) from eight to twelve dollars per day.

§ 120-4: Repealed by Session Laws 1951, c. 23, s. 2.

ARTICLE 2.

Duty and Privilege of Members.

§ 120-5. **Presiding officers may administer oaths.**—The President of the Senate is authorized to administer oaths for the qualification of senators and officers of the Senate, and the Speaker of the House of Representatives is authorized to administer oaths for the qualification of all officers of the House and all members who shall appear after the election of Speaker. (1883, c. 19; Code, s. 2855; Rev., s. 4400; C. S., s. 6089.)

§ 120-6. **Members to convene at appointed time and place.**—Every person elected to represent any county or district in the General Assembly shall appear at such time and place as may be appointed for the meeting thereof, on the first day, and attend to the public business as occasion shall require. (1787, c. 277, s. 1, P. R.; R. C., c. 52, s. 27; Code, s. 2847; Rev., s. 4401; C. S., s. 6090.)

§ 120-7. **Penalty for failure to discharge duty.**—If any member shall fail to appear, or shall neglect to attend to the duties of his office, he shall forfeit and pay for not appearing ten dollars, and two dollars for every day he may be absent from his duties during the session, to be deducted from his pay as a member; but a majority of the members of either house of the General Assembly may remit such

finances and forfeitures, or any part thereof, where it shall appear that such member has been prevented from attending to his duties by sickness or other sufficient cause. (1787, c. 277, s. 2, P. R.; R. C., c. 52, s. 28; Code, s. 2848; Rev., s. 4402; C. S., s. 6091.)

§ 120-8. Expulsion for corrupt practices in election.—If any person elected a member of the General Assembly shall by himself or any other person, directly or indirectly, give, or cause to be given, any money, property, reward or present whatsoever, or give, or cause to be given by himself or another, any treat or entertainment of meat or drink, at any public meeting or collection of the people, to any person for his vote or to influence him in his election, such person shall, on due proof, be expelled from his seat in the General Assembly. (1801, c. 580, s. 2, P. R.; R. C., c. 52, s. 24; Code, s. 2846; Rev., s. 4403; C. S., s. 6092.)

§ 120-9. Freedom of speech; protection from arrest.—The members shall have freedom of speech and debate in the General Assembly, and shall not be liable to impeachment or question, in any court or place out of the General Assembly, for words therein spoken; and shall be protected, except in cases of crime, from all arrest and imprisonment, or attachment of property, during the time of their going to, coming from, or attending the General Assembly. (1787, c. 277, s. 3, P. R.; R. C., c. 52, s. 29; Code, s. 2849; Rev., s. 4404; C. S., s. 6093.)

ARTICLE 3.

Contests.

§ 120-10. Notice of contest.—No person shall be allowed to contest the seat of any member of the General Assembly unless he shall have given to the member thirty days' notice thereof in writing, prior to the meeting of the General Assembly, which must state the particular grounds of such contest. If the seat is contested on account of the reception of illegal votes, the notice must set forth the number of such votes, by whom given, and the supposed disqualifications; and if the same is contested on account of the rejection of legal votes, the notice must give the names of the persons whose votes were rejected. No evidence shall be admitted to show that the contestant received illegal votes, unless he shall also have been notified the same number of days, and in the same manner. The same notice of time and place required in taking depositions shall be required and proved on the investigation. (1796, c. 466, s. 1, P. R.; R. C., c. 52, s. 31; Code, s. 2850; 1893, c. 192; Rev., s. 4406; C. S., s. 6095.)

§ 120-11. Depositions taken; penalty and privilege of witnesses.—Any justice of the peace, or any person duly authorized to take depositions to be read before courts, may take depositions to be used on the investigation, and may issue subpoenas for witnesses, which shall be executed by any officer authorized to execute process. And if any witness shall fail to appear and give his deposition according to the subpoena, he shall forfeit and pay to the party causing him to be summoned forty dollars. And on such investigation no witness in this or in the case of any other contested election shall be excused from discovering whether he voted at such election, or his qualification to vote, except as to his conviction for any offense which would disqualify him. And if he was not a qualified voter, he shall be compelled to discover for whom he voted; but any witness making such discovery shall not be subject to criminal or penal prosecution for having voted at such election. (1800, c. 557, s. 1, P. R.; R. C., c. 52, s. 32; 1868-9, c. 270, s. 12; Code, s. 2851; Rev., s. 4407; C. S., s. 6096.)

ARTICLE 4.

Reports of Officers to General Assembly.

§ 120-12. Reports from State institutions and departments.—It shall be the duty of the chief officer of each department of the State and of the boards of

directors of all institutions supported in whole or in part by appropriations from the State, to submit to the General Assembly, with their respective reports, bills providing for the support and management of their respective departments; these reports, with those of the other officers of the executive department, shall be submitted to the Governor, to be transmitted by him with his message to the General Assembly. (1800, c. 557, s. 2, P. R.; Code, s. 2865; Rev., s. 4410; C. S., s. 6099.)

§ 120-13: Repealed by Session Laws 1961, c. 243, s. 1.

ARTICLE 5.

Investigating Committees.

§ 120-14. **Power of committees.**—Any committee of investigation raised either by joint resolution or resolution of either house of the General Assembly has full power to send for persons and papers, and, if necessary, to compel attendance and production of papers by attachment or otherwise. (1868-9, c. 50, s. 1; Code, s. 2853; Rev., s. 4412; C. S., s. 6100.)

Duration of Authority.—In the absence of express enactment otherwise, the existence of a legislative committee necessarily de-

termines upon the adjournment of the body to which it belongs. *Bank v. Worth*, 117 N. C. 146, 23 S. E. 160 (1895).

§ 120-15. **Chairman may administer oaths.**—The chairman of any committee or any person in his presence, and under his direction, shall have power and authority to administer oaths. (1869-70, c. 5, s. 3; Code, s. 2856; Rev., s. 4413; C. S., s. 6101.)

§ 120-16. **Pay of witnesses.**—Any witness appearing and giving testimony shall be entitled to receive from the person at whose instance he was summoned ten cents for every mile traveling to and from his residence, and ferriage, to be recovered before any justice of the peace upon the certificate of the commissioner. (1800, c. 557, s. 2, P. R.; R. C., c. 52, s. 33; Code, s. 2860; Rev., s. 4414; C. S., s. 6102.)

§ 120-17. **Appearance before committee.**—Every person desiring to appear either in person or by attorney to introduce testimony, or to offer argument for or against the passage of an act or resolution, before any committee of either house of the General Assembly, shall first make application to such committee, stating in writing his object, the number and names of his witnesses, and the nature of their testimony. If the committee consider the information likely to be important, or the interest of the applicant to be great, they shall appoint a time and place for hearing the same, with such limitations as may be deemed necessary. (1868-9, c. 270, s. 10; Code, s. 2858; Rev., s. 4415; C. S., s. 6103.)

§ 120-18. **Appeal from denial of right to be heard.**—If any committee shall refuse to grant the request of any citizen to be heard before it in a matter touching his interests, he may appeal to the house of which the committee is a part; and if he shows good reason for his request the house shall order it to be granted. (1868-9, c. 270, s. 11; Code, s. 2859; Rev., s. 4416; C. S., s. 6104.)

§ 120-19. **State officers, etc., upon request, to furnish data and information to legislative committees.**—All officers, agents, agencies, and departments of the State are required to give to any committee of the General Assembly, upon request, all information and all data within their possession, or ascertainable from their records. This requirement is mandatory and shall include requests made by any individual member of the General Assembly or any of its committees or chairmen thereof. (Resolution 19, 1937, p. 927.)

ARTICLE 6.

Acts and Journals.

§ 120-20. When acts take effect.—Acts of the General Assembly shall be in force only from and after thirty days after the adjournment of the session in which they shall have passed, unless the commencement of the operation thereof be expressly otherwise directed. (1799, c. 527, P. R.; R. C., c. 52, s. 35; 1868-9, c. 270, s. 1; Code, s. 2862; Rev., s. 4417; C. S., s. 6105.)

Editor's Note.—This section abrogates the doctrine of *Sumner v. Barksdale*, 1 N. C. 328 (1800), and *Smith v. Smith*, 1 N. C. 30 (17—), in which it was held that acts of the General Assembly take effect from the beginning of the session in which they are passed.

Where an act declares that it is to be in force from and after its ratification, instead of its passage, then the day on which it is ratified by the signatures of the speakers of the two houses is the day from and after which the act is in force. *Hamlet v. Taylor*, 50 N. C. 36 (1857), holding that an act

which provides that it shall be in force from and after its passage takes effect from the first day of the session at which it was passed.

Where a statute is to be in force from and after its ratification it will be held effective from the first moment of the day of its enactment, in the absence of evidence of the precise time; such evidence, however, will always be received when required for the prevention of a wrong or the assertion of a meritorious right. *Lloyd v. North Carolina R. Co.*, 151 N. C. 536, 66 S. E. 604 (1909).

§ 120-21. Notice given of private acts.—Any person who may desire the passage of a private law shall give notice of his intention to make application by advertisement in some newspaper of the State which circulates in the county where the applicant resides, or in which such private law will operate, or by advertisement at the door of the courthouse and three other public places in such county for at least thirty days before the application; and when any private bill shall be introduced, a copy of such advertisement, with due proof of its having been so published, shall be produced before the second reading thereof. (Const., art. 2, s. 12; 1796, c. 466, s. 2, P. R.; 1835, c. 15; R. C., c. 52, s. 34; Code, s. 2861; Rev., s. 4418; C. S., s. 6106.)

Cross Reference.—For constitutional requirement of notice, see Art. II, § 12 of the Constitution.

Conclusive Presumption as to Notice.—The courts will conclusively presume, from the ratification of a legislative act authorizing a county to issue bonds, that the notice of thirty days required by § 12, Article II of the Constitution has been given. *Cox v. Commissioners*, 146 N. C. 584, 60 S. E. 516 (1908).

If the legislative journal is silent as to the fact, the presumption would be that the legislature obeyed the Constitution. *Gatlin v. Tarboro*, 78 N. C. 119 (1878).

The courts will not go behind the ratification of an act to inquire as to the giving of notice, and will conclusively presume that the requirement of notice has been observed. *State v. Holmes*, 207 N. C. 293, 176 S. E. 746 (1934).

§ 120-22. Enrollment of acts; duplication and distribution of copies.—(a) All bills passed by the General Assembly shall be enrolled for ratification under the supervision and direction of the Secretary of State. Prior to enrolling any bill the Secretary of State shall substitute the corresponding Arabic numerals for any date or for any section number of the General Statutes or of any act of the General Assembly which is written in words. All bills so enrolled shall be typewritten and carefully proofread. The Secretary of State is authorized and empowered to secure such equipment as may be required for this purpose, and from time to time during the sessions of the General Assembly, to employ such number of competent and trained persons, not to exceed twelve at any one time, as may be necessary to perform this service. One of such number so employed shall be designated as chief enrolling clerk, and shall receive not to exceed the sum of six dollars (\$6.00) per day for his services, and each of the others so employed shall receive not to exceed the sum of five dollars per day for his services: Provided, that when the business of the General Assembly has reached such a proportion that the employees authorized are unable to keep up with the enrollment of bills as they are passed, the Secre-

tary of State is hereby authorized to use the employees in the various State departments before and after office hours in the enrollment of such bills, and they shall be paid one cent per line upon certification made to the State Auditor by the Secretary of State.

(b) The General Assembly is authorized to provide for the duplication and limited distribution of copies of enrolled and ratified laws and joint resolutions of the General Assembly. The Speaker of the House and the President of the Senate are authorized to jointly promulgate rules and regulations to govern the duplication and distribution of current laws and joint resolutions of the General Assembly during and immediately after the biennial and any special sessions of the General Assembly, by jointly executed and signed order which shall be spread upon the Journal of the respective Houses. The Enrolling Office, under the supervision and direction of the Secretary of State, shall furnish the General Assembly with a suitable and conformed copy of all laws and joint resolutions of the General Assembly, which shall show the chapter number of any law or the number of any joint resolution in conformity with the number assigned to the enactment for the purposes of printing and publication of the session laws. Details concerning the duplication of the laws and joint resolutions, the number of copies of each enactment to be duplicated, and the distribution of same shall be as ordered by the presiding officers of the House and Senate, but distribution of the duplications shall be restricted to the officers and members of the General Assembly, the offices of the Secretary of State, the Enrolling Office, the Attorney General, the Institute of Government, and such other officers, departments, and agencies of State government as the rules and regulations shall provide. The cost and expenses of printing, duplication, and distribution shall be paid out of funds appropriated to the General Assembly as in case of the cost and expenses of printing of bills upon introduction. (1903, c. 5; Rev., s. 4422; C. S., s. 6108; 1933, c. 173; 1945, c. 416, s. 1; 1947, c. 378; 1963, c. 213).

Editor's Note.—The 1933 amendment rewrote this section.

The 1945 amendment substituted the present proviso at the end of present subsection (a) for the former proviso which authorized the rules committees to increase or decrease the number of persons employed in the enrollment of bills. Section 2 of the amendatory act provides that State employees borrowed and used to do work

under the proviso shall not be entitled to receive any additional compensation for services which may be performed during their regular office hours.

The 1947 amendment inserted the second sentence in present subsection (a).

The 1963 amendment designated the former section as subsection (a) and added subsection (b).

§§ 120-23 to 120-25: Transferred to §§ 147-43.1 to 147-43.3 by virtue of Session Laws 1943, c. 543.

§ 120-26: Repealed by Session Laws 1943, c. 543.

§ 120-27. **Journals; preparation and filing by clerks of houses.**—It shall be the duty of the principal clerks of the two houses of the General Assembly to hasten the preparation of their journals for the printer, so that in no case at any time shall the journal of either house of any one day's proceedings remain unprepared for the printer by the clerk for a longer period than six days after its approval, and such clerks shall, immediately after the preparation of any and every day's proceedings of their respective houses, send the same to the office of the Secretary of State. (1872-3, c. 45, ss. 2, 3; Code, ss. 3627, 3628; Rev., s. 5100; C. S., s. 7299.)

§ 120-28. **Journals indexed by clerks.**—The principal clerks of the two houses of the General Assembly shall provide full and complete indexes for the journals of their respective houses. (1866-7, c. 71; 1881, c. 292; Code, s. 2868; Rev., s. 4421; C. S., s. 6112.)

§ 120-29. **Journals deposited with Secretary of State.**—The principal clerks of the Senate and House of Representatives, as soon as may be practicable after the close of each session, shall deposit in the office of the Secretary of State the journals

of the General Assembly; and the Secretary of State shall make and certify copies of any part or entry of the journals, and may take for the copy of each entry made and certified the same fee as for the copy of a grant. (1819, c. 1020, P. R.; R. C., c. 52, s. 36; Code, s. 2867; Rev., s. 4420; C. S., s. 6113.)

§ 120-30: Repealed by Session Laws 1961, c. 24.

ARTICLE 6A.

Legislative Council.

§ 120-30.1. **Creation; appointment of members; members ex officio.**—There is hereby created a Legislative Council to consist of five senators to be appointed by the President pro tempore of the Senate and five representatives to be appointed by the Speaker of the House. The appointments from each house shall be subject to the approval of a majority vote of the members of that house. The President pro tempore of the Senate and the Speaker of the House shall be ex officio members of the Legislative Council. Provided, that when the President of the Senate has been elected by the Senate from its own membership, then the President of the Senate shall make the appointments of the Senate members of the Legislative Council, shall serve ex officio as a member of the Council and shall perform the duties otherwise vested in the President pro tempore by §§ 120-30.4 and 120-30.5 of this article. (1963, c. 721, s. 1.)

§ 120-30.2. **Time of appointments; terms of office.**—Appointments to the Legislative Council shall be made prior to the close of each regular session of the General Assembly. The term of office shall begin on the day of adjournment sine die of the session at which the appointments were made, and shall end on the date when the next regular session of the General Assembly convenes. (1963, c. 721, s. 2.)

§ 120-30.3. **Vacancies.**—Vacancies in the appointive membership of the Legislative Council occurring during a term shall be filled for the unexpired term by appointment by the officer who made the original appointment. Vacancies in the ex officio membership shall be filled for the unexpired term by election by the remaining members of the Council. Every vacancy shall be filled by a member of the same house as that of the person causing the vacancy. (1963, c. 721, s. 3.)

§ 120-30.4. **Organization; committees; rules of procedure; quorum.**—The Legislative Council shall elect a chairman and a vice-chairman and such other officers as it deems necessary. The President pro tempore of the Senate shall preside at the organizational meeting until a chairman has been elected. The Council may create committees consisting of its own members or other members of the General Assembly, or of other persons having special knowledge or competence as to particular matters, to study and report on assigned subjects. The Council shall adopt rules of procedure governing its meetings. Six members shall constitute a quorum of the Council. (1963, c. 721, s. 4.)

§ 120-30.5. **Meetings; right of legislators to attend.**—The first meeting of the Legislative Council shall be held at the call of the President pro tempore of the Senate in the State Legislative Building within fifteen (15) days after the appointment of the members. Thereafter the Council shall meet at such times and places as the Council may deem desirable, but in any event it shall meet at least once in each quarter of the calendar year. Every member of the General Assembly has the right to attend all sessions of the Council and its committees, and to present his views at the meeting on any subject under consideration. (1963, c. 721, s. 5.)

§ 120-30.6. **Employees; executive secretary; contracts.**—The Legislative Council may employ and fix the compensation of such personnel, including an executive secretary, as the Council may deem necessary for the execution of the functions

of the Council and its committees. The Council may contract with any public or private agency or institution for staff services, and for assistance in performing research studies or collecting information. (1963, c. 721, s. 6.)

§ 120-30.7. Cooperation with Council.—The Legislative Council or any committee thereof may call upon any department, agency, institution, or officer of the State or of any political subdivision thereof for such facilities and data as may be available, and these departments, agencies, institutions, and officers shall cooperate with the Council and its committees to the fullest possible extent. (1963, c. 721, s. 7.)

§ 120-30.8 Powers and duties.—The Legislative Council has the following powers and duties:

- (1) Pursuant to the direction of the General Assembly or either house thereof, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner. In making these studies and investigations, the Council shall give priority to those subjects requested by the General Assembly.
- (2) To report to the General Assembly the results of the studies made by or at the direction of the Council. The reports may be accompanied by the recommendations of the Council and bills to effectuate the recommendations.
- (3) To provide legislative research facilities and personnel for the use of the committees and individual members of the General Assembly. The committees of the General Assembly shall have first priority in the use of these research facilities and personnel.
- (4) Upon completion by the clerks of the Senate and House of their duties after the close of each legislative session, to assume custody of all equipment, records, materials and supplies in the possession of the clerks. Immediately prior to the convening of the next session, the Council shall transfer all equipment, materials and supplies to the clerks of the respective houses.
- (5) When the General Assembly is not in session, to authorize the expenditure of funds appropriated to the General Assembly for the purchase, repair or maintenance of furniture, equipment, materials and supplies, and to contract for services needed by the General Assembly. (1963, c. 721, s. 8.)

§ 120-30.9. Compensation and expenses of members of Council or committees.—The members of the Council and of any committee established pursuant to this chapter shall be paid twenty-five dollars (\$25.00) for each day of meetings of the Council or a committee thereof attended by them, and in addition shall be reimbursed for all necessary travelling and other expenses incurred in the performance of their duties. All payments for purposes authorized by this chapter shall be made by the State Treasurer upon written authorization of the chairman or the executive secretary of the Council, from funds appropriated to the General Assembly. (1963, c. 721, s. 9.)

ARTICLE 7.

Employees.

§ 120-31. Legislative employees paid on certificate of presiding officers.—The Auditor is authorized to audit the account of any employee of the Senate or of the House of Representatives, upon the certificate of the President of the Senate and of the Speaker of the House of Representatives that such services have been rendered for which the account is presented, and that the amount as stated in said

account is reasonable, just and proper. (1870-71, resolution, p. 508; Code, s. 2873; Rev., s. 2735; C. S., s. 3848.)

§ 120-32. Principal clerk; term of office; duties.—The principal clerk of each house of the General Assembly shall hold his office for the term of two years, or until another is appointed; shall be present at such time and place as may be fixed for the meeting of the General Assembly, and on the first day thereof, and perform the duties of his office. (1846, c. 63; R. C., c. 52, s. 37; Code, s. 2870; Rev., s. 4426; C. S., s. 6114.)

§ 120-33. Compensation of employees of the General Assembly; mileage.—The principal clerks of each house shall be allowed the sum of twenty-four dollars (\$24.00) per day during the session of the General Assembly and mileage at the rate of ten cents (10¢) per mile, for one round trip only, from their homes to Raleigh and return. The reading clerks and the sergeants-at-arms of each house shall be allowed the sum of eighteen dollars (\$18.00) per day during the session of the General Assembly and mileage at the rate of ten cents (10¢) per mile, for one round trip only, from their homes to Raleigh and return. The chief enrolling clerk shall be allowed the sum of twenty-four dollars (\$24.00) per day during the session of the General Assembly and mileage at the rate of ten cents (10¢) per mile, for one round trip only, from his home to Raleigh and return.

The journal clerks, calendar clerks and chief engrossing clerks in each house shall be allowed the sum of seventeen dollars (\$17.00) per day during the session of the General Assembly and mileage at the rate of ten cents (10¢) per mile, for one round trip only, from their homes to Raleigh and return. The assistants to the calendar clerk and the assistants to the journal clerk and the clerks to the committees on finance and appropriations of each house and the disbursing clerks and the joint disbursing clerks, the secretary to the Speaker of the House of Representatives, and the secretary to the Lieutenant-Governor shall be allowed the sum of fifteen dollars (\$15.00) per day during the session of the General Assembly and mileage at the rate of ten cents (10¢) per mile, for one round trip only, from their homes to Raleigh and return. The assistants to the engrossing clerks and all committee clerks and assistants appointed by the Secretary of State to supervise the enrolling of bills and resolutions shall be allowed the sum of thirteen dollars (\$13.00) per day during the session of the General Assembly and mileage at the rate of ten cents (10¢) per mile, for one round trip only, from their homes to Raleigh and return. The chief pages of the House of Representatives and the Senate shall receive the sum of eight dollars (\$8.00) per day during the session of the General Assembly and mileage at the rate of ten cents (10¢) per mile, for one round trip only, from their homes to Raleigh and return. All other pages authorized by either of the two houses shall receive the sum of six dollars and fifty cents (\$6.50) per day during the session of the General Assembly and mileage at the rate of ten cents (10¢) per mile, for one round trip only, from their homes to Raleigh and return. The chaplain of each house shall be allowed the sum of ten dollars (\$10.00) per day and mileage at the rate of ten cents (10¢) per mile, for one round trip only, from his home to Raleigh and return. All laborers and assistants to the sergeants-at-arms authorized by law or rules of either the House of Representatives or the Senate shall receive during the session of the General Assembly the sum of nine dollars (\$9.00) per day and mileage at the rate of ten cents (10¢) per mile, for one round trip only, from their homes to Raleigh and return. (1925, c. 72, s. 1; 1929, c. 3, s. 1; 1933, c. 6, s. 1; 1937, cc. 1, 272; 1943, c. 303; 1945, c. 9; 1951, c. 2; 1957, cc. 5, 1432; 1961, cc. 1176, 1177.)

Editor's Note.—The 1951 amendment rewrote this section as changed by the previous amendments.

The first 1957 amendment increased the compensation of the clerks in the first sentence. The second 1957 amendment in-

serted the second sentence relating to "reading clerks and the sergeants-at-arms," deleted the reference to them from the present third sentence, and increased the compensation at several places in the section.

The 1961 amendments, retroactive to Feb. 1, 1961, increased the compensation of the sub-officers and employees of the General Assembly. The first three sentences are

from the second 1961 amendment and the rest of the section is from the first 1961 amendment.

§ 120-34. Classification of laborers.—The chairman of the committee on rules of the House of Representatives and the chairman of the committee on rules of the Senate are hereby authorized, empowered and directed to classify the laborers of the General Assembly and certify to the chief clerk of the House of Representatives and the chief clerk of the Senate the names of all laborers of the first class and all laborers of the second class, to the end that proper warrants may be issued in payment of services rendered in accordance with § 120-33 and the list when certified shall be the classification of such laborers and they shall be paid accordingly. (1925, c. 116.)

§ 120-35. Principal clerks; extra compensation.—The principal clerks of the General Assembly shall be allowed twelve hundred dollars as a compensation for indexing the journals of their respective houses, and five hundred dollars each for extra work and for services required to be performed by them after the adjournment of each session of the General Assembly, including the transcribing of a copy of their respective journals, which shall be filed in the office of the Secretary of State. (1866-7, c. 71; 1881, c. 292; Code, s. 2868; Rev., s. 2732; 1911, c. 116; 1919, c. 170; C. S., s. 3855; 1921, c. 160; 1947, c. 998; 1953, c. 1315.)

Editor's Note.—The 1947 amendment increased the compensation for indexing the journals from four hundred to seven hundred fifty dollars. The 1953 amendment increased the amount from seven hundred fifty to twelve hundred dollars.

§ 120-36. Compensation of principal clerks for services in organizing Senate and House.—The principal clerks of the Senate and House of Representatives, together with such assistants as may be necessary in arranging the halls of the Senate and House and completing the organization of the two branches of the General Assembly before the days for convening thereof, and such services as are rendered after adjournment in the completion of the records, shall receive the same per diem as shall be allowed by law to the said clerks and their assistants during the session. The State Auditor is directed to issue his warrants for such clerks and for such time as is certified to by the President of the Senate and the Speaker of the House, upon vouchers signed by them. (1923, c. 130; C. S., s. 3855(a).)

ARTICLE 8.

Preservation and Protection of Furniture and Fixtures.

§ 120-37. Principal clerks to take and publish inventory.—At the end of each and every session of the General Assembly, the principal clerks of each house shall take an inventory of the furniture, desks, fixtures, chairs, and other property belonging to their respective houses, and publish said inventory in the appendix of their respective journals. (1921, c. 219, s. 1; C. S., s. 6116(a).)

§ 120-38. Duty and responsibility of Board of Public Buildings and Grounds.—The Board of Public Buildings and Grounds shall have charge and care of the said furniture and fixtures during the vacations of the General Assembly, and it shall be its duty to see that said furniture remains in the offices and halls of the two houses from session to session, and it shall be responsible for the safekeeping of said furniture and fixtures. (1921, c. 219, s. 2; C. S., s. 6116(b).)

§ 120-39. Removal of furniture and fixtures a misdemeanor.—It shall be a misdemeanor for any person or persons to remove any of said furniture and fixtures from the halls of the General Assembly between sessions of the legislature for any purpose whatever, except as directed by the Board of Public Buildings and Grounds. (1921, c. 219, s. 3; C. S., s. 6116(c); 1953, c. 911.)

Editor's Note.—The 1953 amendment added the exception at the end of the section.

ARTICLE 9.

Lobbying.

§ 120-40. Lobbying defined; registration of lobbyists.—Every person, corporation or association which employs any person to act as counsel or agent to promote or oppose in any manner the passage by the General Assembly of any legislation affecting the pecuniary interests of any individual, association or corporation as distinct from those of the whole people of the State, or to act in any manner as a legislative counsel or agent in connection with any such legislation, shall, within one week after the date of such employment, cause the name of the person so employed, to be entered upon a legislative docket as hereafter provided. It shall also be the duty of the person so employed to enter or cause to be entered his name upon such docket. Upon the termination of such employment such fact may be entered opposite the name of any person so employed either by the employer or employee. (1933, c. 11, s. 1.)

Editor's Note.—For a discussion of this and the following sections, see 11 N. C. Law Rev. 235.

§ 120-41. Legislative docket for registration.—The Secretary of State shall prepare and keep the legislative docket for the uses provided in this article. In such docket shall be entered the name, occupation or business, and business address of the employer, the name, residence and occupation of the person employed, the date of employment or agreement therefor, the length of time that the employment is to continue, if such time can be determined, and the subject or subjects of legislation to which the employment relates. Such docket shall be a public record and open to the inspection of any citizen at any time during the regular business hours of the office of the Secretary of State. (1933, c. 11, s. 2.)

§ 120-42. Contingent fees prohibited.—No person shall be employed as a legislative counsel or agent for a compensation dependent, in any manner, upon the passage or defeat of any proposed legislation or upon any other contingency connected with the action of the General Assembly, or of either branch thereof, or any committee thereof. (1933, c. 11, s. 3.)

§ 120-43. Written authority from employer to be filed; copy for legislative committee.—Legislative counsel and agents required to have their names entered upon the legislative docket shall file with the Secretary of State within ten days after the date of making such entry a written authorization to act as such, signed by the person or corporation employing them. A copy of such written authorization executed by those persons, firms, corporations or organizations for whom they claim to be authorized to speak shall also be filed by such legislative counsel or agents with the chairman of any committee of either branch of the General Assembly at or before the time of appearance before the committee in a representative capacity. (1933, c. 11, s. 4; 1961, c. 1151.)

Editor's Note.—The 1961 amendment, effective July 1, 1961, added the second sentence.

§ 120-44. Detailed statement of expenses to be filed.—Within thirty days after the final adjournment of the General Assembly every person, corporation or association, whose name appears upon the legislative docket of the session, shall file with the Secretary of State a complete and detailed statement, sworn to before a notary public or justice of the peace by the person making the same, or in the case of a corporation by its president or treasurer, of all expenses paid or incurred by such person, corporation or association, in connection with promoting or opposing in any manner the passage by the General Assembly of any legislation coming

within the terms of this article. Such statements shall be in such form as shall be prescribed by the Secretary of State and shall be open to public inspection. (1933, c. 11, s. 5.)

§ 120-45. Going upon floor during session prohibited.—It shall be unlawful for any person, employed for a pecuniary consideration to act as legislative counsel or agent, as defined by this article, to go upon the floor of either house of the General Assembly while the same is in session, except upon invitation of such house. (1933, c. 11, s. 6.)

§ 120-46. Application of article.—The provisions of this article shall not apply to any county, city, town or municipality, but shall apply to the executive officers of all other corporations who undertake, in such capacity, to perform services as legislative counsel or agent for such corporations, regardless of whether they receive additional compensation for such services. (1933, c. 11, s. 7.)

§ 120-47. Punishment for violation.—Any legislative counsel or agent and any employer of such legislative counsel or agent, violating any provision of this article, shall be guilty of a misdemeanor and upon conviction, shall be fined not less than fifty nor more than one thousand dollars, or imprisoned not exceeding two years, or both. (1933, c. 11, s. 8.)

ARTICLE 10.

Influencing Public Opinion or Legislation.

§ 120-48. Registration of persons and organizations engaged principally in influencing public opinion or legislation.—Every person, firm, corporation, association, or organization, whether by or through its agents, servants, employees or officers, who or which is principally engaged in the activity or business of influencing public opinion and/or legislation in this State shall, prior to engaging in such activity or business, cause his, or its name to be entered upon a docket in the office of the Secretary of State of North Carolina, as hereinafter provided. (1947, c. 891, s. 1.)

Editor's Note.—For comment on this article, see 25 N. C. Law Rev. 458.

Prosecution of Violations.—There is no language in this article which deprives the solicitor of his statutory and constitutional duty to prosecute its violation. National Ass'n for Advancement of Colored People

v. Eure, 245 N. C. 331, 95 S. E. (2d) 893 (1957).

The Attorney General has no specific enforcement duty in connection with this article. National Ass'n for Advancement of Colored People v. Eure, 245 N. C. 331, 95 S. E. (2d) 893 (1957).

§ 120-49. Information to be shown on docket.—The following information shall be entered in such docket:

The name, business address of the principal and all branch offices of the applicant; the purpose or purposes for which such corporation, association, or organization was formed; the names of the principal officers, the names and addresses of its agents, servants, employees or officers by or through which it intends to carry on such activity or business in this State; a financial statement showing the assets and liabilities of the applicant and the source or sources of its income, itemizing in detail any contributions, donations, gifts or other income and from what source or sources received. (1947, c. 891, s. 2.)

§ 120-50. Docket kept by Secretary of State; record open to public.—The Secretary of State shall prepare and keep in his office the docket containing the information required by § 120-49. Such record shall be a public record and shall be open to the inspection of any citizen at any time during the regular business hours of the office of the Secretary of State. (1947, c. 891, s. 3.)

§ 120-51. Certain localized activities exempted.—This article shall not apply to any person, firm, corporation, or organization who or which is engaged in in-

fluencing public opinion on any matter which is applicable only to one county or one county and a county contiguous thereto. (1947, c. 891, s. 4.)

§ 120-52. Failure to comply with article made misdemeanor.—Any person, firm, corporation, association, or organization who or which shall engage in the activity or business herein described without first causing his, her, or its name to be entered upon such docket in the manner and form prescribed in this article shall be guilty of a misdemeanor and shall, upon conviction, be fined or imprisoned in the discretion of the court. (1947, c. 891, s. 5.)

§ 120-53. Time for registration by persons presently engaged in regulated activities.—All persons engaged in the activity or business herein described, on April 5, 1947, shall, within thirty days thereafter, cause his, her, or its name to be entered upon the docket in the office of the Secretary of State of North Carolina in the manner and form prescribed by this article. (1947, c. 891, s. 6.)

§ 120-54. Annual registration required.—Every person, firm, corporation, or organization engaging in the activity or business prescribed in this article shall, on or before the first day of January, 1948, and annually thereafter, again cause his, her, or its name to be entered upon such docket in the manner and form prescribed in this article. (1947, c. 891, s. 7.)

§ 120-55. Exemption of newspapers, radio, political candidates, etc.—This article shall not apply to persons, firms, corporations, or organizations who carry on such activity or business solely through the medium of newspapers, periodicals, magazines, or other like means which are or may be admitted under United States postal regulations as second-class mail matter in the United States mails as defined in Title 39, § 224, United States Code Annotated, and/or through radio, television or facsimile broadcast operations. This article shall also not apply to any person, firm, corporation, candidate in any political election campaign committee, or any committee, association, organization, or group of persons who or which filed information as required by the Corrupt Practices Act of 1931. (1947, c. 891, s. 8.)

Chapter 121.

State Department of Archives and History.

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ARTICLE 1.

General Provisions.

§ 121-1. **Name.**—The archival and historical agency of the State of North Carolina shall be the State Department of Archives and History. (1945, c. 55; 1955, c. 543, s. 1.)

Editor's Note.—The 1945 amendment rewrote this chapter.

The 1955 amendment, effective July 1, 1955, rewrote and revised this chapter which formerly contained eight sections. The chapter now provides for the preservation of historic sites by the Department of Archives and History, a matter formerly covered by repealed §§ 143-260.1 to 143-260.5, which were derived from Session Laws 1953, c. 1197, ss. 1-5, creating the former Historic Sites Commission.

Formerly "Historical Commission."—Prior to the enactment of chapter 237 of the 1943 Session Laws, the State Department of Archives and History was known as the Historical Commission. The act provided that wherever the words "Historical Commission," "North Carolina Historical Commission," "State Historical Commission" or "Commission" are used with reference to the Historical Commission in any

section of the laws of North Carolina, they shall be interpreted to mean "State Department of Archives and History," and such title shall be substituted therefor.

Park Properties Principally of Historic or Archeological Interest.—Session Laws 1955, c. 543, s. 3 provides: "All historic or archeological properties now administered by the Department of Conservation and Development shall be transferred to the Department of Archives and History on July 1, 1955. The Departments of Conservation and Development and of Archives and History shall jointly determine which park properties and parts thereof owned by the State of North Carolina are principally of historic or archeological interest. A report containing the joint findings of the two Departments shall be filed with the Governor and Council of State on or before July 1, 1955, and upon approval of this report by the Governor and Council of

State, control and administration of the properties shall pass to the Department of Archives and History.

"If these Departments cannot agree as to whether particular properties are chiefly valuable because of their historic or archeological significance or because of their scenic or recreational values, and if they cannot reach an agreement for joint or separate control and administration of properties concerning which some question may arise, or for the physical division of such properties, they shall submit separate re-

ports to the Governor and Council of State, setting forth the recommendations of each Department with respect to those sites on which agreement cannot be reached. The Governor and Council of State, upon receiving these reports, shall determine whether the property or properties in question shall be controlled and administered by the Department of Archives and History or by the Department of Conservation and Development, or jointly by the two Departments."

§ 121-2. Powers and duties of the Department.—The State Department of Archives and History shall have the following powers and duties:

- (1) To adopt a seal for official use in official business.
- (2) To make to the Governor a biennial report of its activities and needs, including recommendations for improving its services to the State, to be transmitted by the Governor to the General Assembly.
- (3) To accept gifts, bequests, and endowments for purposes which fall within the general legal powers and duties of the Department. Unless otherwise specified by the donor or legator, the Department may either expend both the principal and interest of any gift or bequest or may invest such funds in whole or in part, by and with the consent of the State Treasurer, in such securities as those in which sinking funds may be invested under the provisions of G. S. 142-34.
- (4) To preserve and administer such public archives as shall be transferred to its custody, and to collect, preserve, and administer private and unofficial historical records and relics relating to the history of North Carolina and the territory included therein from the earliest times. The Department shall carefully protect and preserve such materials, file them according to approved archival practices, and permit them, at reasonable times and under the supervision of the Department, to be inspected, examined, or copied: Provided, that any materials placed in the keeping of the Department under special terms or conditions restricting their use shall be made accessible only in accordance with such terms or conditions.
- (4.1) To conduct a records management program, including the operation of a records center or centers and a centralized microfilming program, for the benefit of all State agencies.
- (5) To have materials on the history of North Carolina properly edited, published as other State printing, and distributed under the direction of the Department.
- (6) To fix a reasonable price for any or all of its publications and to devote the revenue arising from such sales to the work of the Department.
- (7) To maintain one or more historical museums, to collect and preserve therein authentic, important historical materials, and according to approved museum practices to classify, catalog, file and when feasible display such materials and make them available for study.
- (8) To select suitable sites on property owned by the State of North Carolina or any subdivision of the State for the erection of historical markers calling attention to nearby historic sites and to prepare appropriate inscriptions to be placed on such markers. The Department shall have all markers manufactured, and when completed, each marker shall be delivered to the State Highway Commission for erection under the provisions of G. S. 136-42 and 136-43.
- (9) To acquire real and personal properties that have Statewide historical or archeological significance by gift, purchase, devise or bequest; to preserve and administer such properties; to charge reasonable admission

fees to such properties; and to determine criteria for the approval of such properties for State aid. In the acquisition of such property, the Department shall have the authority to acquire property adjacent to properties having Statewide historical or archeological significance deemed necessary for the proper use and administration of historic or archeological properties.

- (10) To make reasonable rules for the regulation of the use by the public of such historical or archeological properties under its charge, which regulations, after having been posted in conspicuous places on and adjacent to such State properties and at the courthouse of the county or counties in which such properties are situated, shall have the force and effect of law and any violation of such regulations shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars (\$50.00) or by imprisonment for not exceeding thirty days.
- (11) To organize and administer a junior historian movement, in cooperation with the State Department of Public Instruction, the public schools, and other agencies or organizations that may be concerned therein.
- (12) To establish and appoint an advisory board on historical materials, with whose advice and consent any records or materials in the Department's custody that appear to have no further use or value for official and administrative purposes or for research and reference purposes may be destroyed or otherwise disposed of; and to establish and appoint one or more additional advisory boards or advisory committees to assist the Department in the performance of its duties. The Department is authorized, out of any funds appropriated to the Department, to pay the actual expenses of such board or committee members incurred while on official business.
- (13) To promote and encourage throughout the State knowledge and appreciation of North Carolina history by encouraging the people of the State to engage in the preservation and care of archives, historical manuscripts, museum items, and other historical materials; the writing and publication of State and local histories of high standard; the display and interpretation of historical materials; the marking and preservation of historic or archeological buildings and sites; the teaching of North Carolina history in the schools and colleges; the conduct and presentation of historical celebrations and dramas; the publicizing of the State's history through media of public information; and other activities in historical and allied fields.
- (14) To cooperate with and assist, insofar as practicable, State institutions, departments, and agencies, the counties and municipalities, organizations and individuals engaged in activities in the fields of North Carolina archives and history. (Rev., ss. 4540, 4541; 1907, c. 714, s. 2; 1911, c. 211, s. 6; C. S., s. 6142; 1925, c. 275, s. 11; 1943, c. 237; 1945, c. 55; 1955, c. 543, s. 1; 1957, c. 330, s. 1; 1959, c. 68, s. 1.)

Cross Reference.—As to official records of inoperative boards and agencies, see § 143-268.

Editor's Note.—The 1957 amendment rewrote subdivision (12).

By virtue of G. S. 136-1.1, "State High-

way Commission" has been substituted for "State Highway and Public Works Commission" in subdivision (8).

The 1959 amendment inserted subdivision (4.1).

§ 121-2.1. More adequate teaching of State and local history in public schools.—The Department of Archives and History, with the cooperation of the Superintendent of Public Instruction, is hereby authorized and directed to develop and conduct a program for the better and more adequate teaching of State and local history in the public schools of North Carolina, including the preparation and publication of suitable histories of all counties where such histories do not now

exist and of other appropriate materials, the distribution of such materials to the public schools for a reasonable charge, and the coordination of this program throughout the State. (1961, c. 1068.)

§ 121-3. Executive Board.—(a) **Membership; Terms.**—The Department shall be governed by an Executive Board, composed of the seven persons heretofore appointed and now serving as the governing board of the Department. At the expiration of the current term of each member, his successor shall be appointed by the Governor for a term of six years and until his successor shall be appointed and qualified. Thereafter all members shall be appointed by the Governor and their terms shall be for six years and until their successors shall be appointed and qualified. Any vacancy occurring on the Board by reason of death, resignation or otherwise shall be filled by the Governor for the remainder of the unexpired term.

(b) **Compensation.**—The members of the Executive Board shall serve without salary but shall be allowed their actual expenses when attending to their official duties, to be paid out of any funds appropriated for the maintenance of the Department.

(c) **Organization; Meetings.**—The Board shall elect one of its members as chairman and shall meet regularly at places and dates to be determined by the Board. The Director shall serve as secretary to the Board. Special meetings shall be called by the Director upon order of the chairman on the chairman's own initiative and must be called by the Director at the request of two or more members of the Board. All members shall be notified by the Director in writing of the time and place of regular and special meetings at least seven days in advance of such meeting, except that meetings may be held on shorter notice if all members of the Board shall agree. Four members shall constitute a quorum.

(d) **Powers and Duties.**—The Executive Board shall be the governing body for the State Department of Archives and History and shall have the power to adopt rules and regulations for its own government and for the conduct of any of the functions assigned to the Department under the provisions of this chapter. The Board shall fix the policies under which the Director and other employees of the Department shall carry out the duties imposed upon the Department. (1903, c. 767, s. 2; Rev., s. 4539; 1907, c. 714, s. 1; C. S., s. 6141; 1941, c. 306; 1943, c. 237; 1945, c. 55; 1955, c. 543, s. 1.)

Cross Reference.—As to investment of State Sinking Fund, see § 142-34.

§ 121-4. Director.—The Executive Board shall elect a Director of the Department whose duty it shall be, under the supervision of the Board, to direct and administer the work and activities of the Department as defined and specified by law. He shall serve at a salary to be fixed by the Governor subject to the approval of the Advisory Budget Commission, upon the recommendation of the Executive Board of the Department. The Board, after proper notice and hearing, may remove the Director from office for neglect of duty, malfeasance, misfeasance or non-feasance in office. The Director may employ such qualified persons as may be needed to perform the work and carry out the duties of the Department. (1945, c. 55; 1955, c. 543, s. 1; 1957, c. 541, s. 12.)

Editor's Note.—Prior to the 1957 amendment the salary was fixed by the Governor and Advisory Budget Commission.

§ 121-5. Preservation of records; copies furnished.—Any State, county, municipal or other public official is hereby authorized and empowered to turn over to the Department any State, county, municipal or other public records no longer in current official use, and the Department is authorized in its discretion to accept such records, and having done so, shall provide for their administration and preservation. When such records have been thus surrendered, photocopies, microfilms, typescripts, manuscripts, or other copies of them shall be made and certified under

seal by the Department, upon application of any person, which certification shall have the same force and effect as if made by the official or agency by which the records were transferred to the Department, and the Department may charge reasonable fees for such copies.

When the custodian of official State records certifies to the State Department of Archives and History that such records have no further use or value for official and administrative purposes and when the State Department of Archives and History states that such records appear to have no further use or value for research or reference, then such records may be destroyed or otherwise disposed of by the agency having custody of them.

When the custodian of any official records of any county, city, municipality or other governmental agency certifies to the State Department of Archives and History that such records have no further use or value for official business and when the State Department of Archives and History states that such records appear to have no further use or value for research or reference, then such records may be authorized by the governing body of said county, city, municipality or other governmental agency to be destroyed or otherwise disposed of by the agency having custody of them.

The Department is hereby authorized and empowered to make such orders, rules, and regulations as may be necessary and proper to carry into effect the provisions of the three preceding paragraphs. When any State, county, municipal or other governmental records shall have been destroyed or otherwise disposed of in accordance with the procedure authorized above, any liability that the custodian of such records might incur for such destruction or other disposal shall cease and determine. (1907, c. 714, s. 5; C. S., s. 6145; 1939, c. 249; 1943, c. 237; 1945, c. 55; 1953, c. 224; 1955, c. 543, s. 1.)

§ 121-5.1. Inventorying, repairing and microfilming of county records for security purposes.—The North Carolina Department of Archives and History is hereby authorized and directed to formulate and execute a program of inventorying, repairing, and microfilming in the counties for security purposes those official records of the several counties which the Department determines have permanent value, and of providing safe storage for microfilm copies of such records. (1959, c. 1162.)

§ 121-6. Administration of properties acquired by State.—Historic or archeological properties acquired by the State for administration by the State of North Carolina shall be under the control and administration of the Department of Archives and History. This Department may, in its discretion, make a contract with any county or municipality within the State or with any nonprofit corporation or organization for the administration of any portion of such property. (1955, c. 543, s. 1.)

§ 121-7. Purchase of historic properties.—The Department of Archives and History may, from funds appropriated to the Department for such purpose, acquire, preserve, restore, or operate historic or archeological real and personal properties, or may assist a county, municipality, or nonprofit corporation or organization in the acquisition, preservation, restoration, or operation of such properties by providing a portion of the cost therefor; provided, that no acquisition, preservation, restoration or operation of such properties shall be made by the State of North Carolina and no contribution shall be made from State funds toward such acquisition, preservation, restoration, or operation until (i) the property or properties shall have been approved for such purpose by the Department of Archives and History according to criteria adopted by the Historic Sites Advisory Committee, (ii) the report and recommendation of the Historic Sites Advisory Committee has been received and considered by the Department of Archives and History, and (iii) the Department of Archives and History has found that there is a feasible and practical method of providing funds for the acquisition, preservation, restoration, and

operation of such property. If funds or contributions for such acquisition are not available, the Governor and Council of State may, upon the recommendation of the Department of Archives and History, allocate from the Contingency and Emergency Fund an amount sufficient to acquire an option on property or properties, which option shall continue until thirty (30) days after the adjournment sine die of the next General Assembly. State funds shall not be used for the purchase of property having historic or archeological significance unless the fee simple and unconditional title to such property is acquired by the State of North Carolina or by a county or city therein or by a nonprofit corporation or organization. Upon recommendation of the Department of Archives and History, the Governor and the Council of State are authorized to allocate funds from the Contingency and Emergency Fund for the immediate acquisition, preservation, restoration, or operation of historic or archeological real or personal properties. All funds hereinafter appropriated to purchase, restore, maintain or operate historic or archeological real and personal property shall be deemed to be subject to § 31.2 of the Executive Budget Act unless the statute making the appropriation shall in specific and express terms provide otherwise. (1955, c. 543, s. 1; 1963, c. 210, s. 1.)

Editor's Note.—The 1963 amendment rewrote this section.

§ 121-8. Additional power to acquire historic or archeological properties.—In the event that a historic or archeological property which has been found by the Department of Archives and History to be important for State ownership is in danger of being sold or used so that its historic or archeological value will be destroyed or seriously impaired, or is otherwise in danger of destruction or serious impairment, the Department of Archives and History, after receiving the approval of the Governor and Council of State, shall have the power to acquire such historic or archeological property by condemnation under the provisions of chapter 40 of the General Statutes of North Carolina. The Department, upon finding that destruction or serious impairment of historic or archeological value is imminent, shall file with the Governor and the Council of State a report on the importance of the property and the desirability of its ownership by the State of North Carolina. Upon giving their approval the Governor and Council of State shall file such approval with the clerk of the superior court in the county or counties where such property may be situated. Until such approval is filed, the powers of condemnation shall not be exercised. Such condemnation proceedings shall be instituted and prosecuted in the name of the State of North Carolina, and any property so acquired shall be administered, developed and operated as a State historical or archeological site. (1955, c. 543, s. 1.)

Power to Condemn Land for Restoration of Tryon's Palace.—Chapter 543, Session Laws of 1955, which rewrote this chapter, substituted the Department of Archives and History for the Department of Conservation and Development in chapter 791, Session Laws of 1945, so as to empower the Department of Archives and History under the 1945 act, after obtaining a certificate of public convenience and necessity, to condemn land for the restoration of Tryon's Palace without the approval of the Governor

and Council of State. In re Department of Archives & History, etc., 246 N. C. 392, 98 S. E. (2d) 487 (1957).

The restoration of the first fixed capital of the Colony of North Carolina is a public purpose for which the General Assembly may grant the power of eminent domain, and provide for the payment of the necessary property out of funds available therefor. In re Department of Archives & History, etc., 246 N. C. 392, 98 S. E. (2d) 487 (1957).

§ 121-8.1. Creation and composition of Historic Sites Advisory Committee.—There is hereby created a Historic Sites Advisory Committee which shall consist of seven (7) members. The Committee shall include the following: The State Budget Officer; the Chairman of the Department of History, University of North Carolina; Dean of the School of Design, North Carolina State College; Director of the Department of Conservation and Development; and three (3) persons to be appointed by the Governor for terms ending July 1, 1967 and every four (4) years

thereafter. One (1) of the members to be appointed by the Governor shall reside in the Piedmont, one (1) shall reside in the eastern section of the State, and one (1) shall reside in the western section of the State. The Committee shall elect one (1) of its members as chairman, and the Director of the Department of Archives and History shall serve as secretary. Each ex officio member of the Committee is authorized to designate a member of his staff to represent him at meetings of the Committee. (1963, c. 210, s. 2.)

§ 121-8.2. Duties of Historic Sites Advisory Committee.—The Historic Sites Advisory Committee shall develop criteria for the evaluation of State historic sites and all real and personal property which may be considered to be of such historic or archeological importance as would justify the acquisition and ownership thereof by the State of North Carolina, acting by itself or in connection with any county, city, or town, or any group of citizens or organizations. The Committee shall also develop criteria for the evaluation of all historic or archeological properties owned by or under option to a county, city, town, nonprofit corporation or organization for which State aid is requested. The Committee shall investigate and evaluate all proposed historic and archeological property for which State appropriations are suggested to determine if the property is historically authentic and significant, if it is essential to the development of a balanced program of historic sites, and if practical plans can be developed for financing, maintaining and operating the site. The Committee shall make a written report of its findings and recommendations with respect to all such historic or archeological sites which shall be filed as a matter of record in the custody of the Department of Archives and History. The report shall set out in such detail as may be necessary the amount of money which will have to be expended for the restoration of any such property and the manner and method by which the maintenance and operation should be carried on, and the sources from which funds may be derived for such purpose. (1963, c. 210, s. 2.)

§ 121-8.3. Director of Department of Archives and History to furnish copies of recommendations of Historic Sites Advisory Committee to legislative committees.—The Director of the Department of Archives and History shall furnish to the chairman of each legislative committee to which is referred any bill seeking an appropriation of funds for the purposes of acquiring, preserving, restoring, or operating any property having historic value or significance, at least five copies of the written report of the findings and recommendations of the Historic Sites Advisory Committee theretofore filed with said Department relating to the particular property or properties described in the bill. The copies of the findings and recommendations of the Historic Sites Advisory Committee shall be furnished to the legislative committee chairman or chairmen as soon as practicable. (1963, c. 210, s. 2.)

§ 121-9. Designated employees commissioned special peace officers by Governor.—Upon application by the Director of the Department of Archives and History, the Governor is hereby authorized and empowered to commission as special peace officers such of the employees of the Department of Archives and History as the Director may designate for the purpose of enforcing the laws, rules and regulations enacted or adopted for the protection, preservation and government of State historic or archeological properties under the control or supervision of the Department of Archives and History. Such employees shall receive no additional compensation for performing the duties of special peace officers under this article. (1955, c. 543, s. 1.)

§ 121-10. Powers of arrest.—Any employee of the Department of Archives and History commissioned as a special peace officer shall have the right to arrest with warrant any person violating any law, rule or regulation on or relating to the State historic or archeological properties under the control or supervision of the Department of Archives and History, and shall have power to pursue and arrest

without warrant any person violating in his presence any law, rule or regulation on or relating to said historic and archeological properties under the control or supervision of the Department of Archives and History. (1955, c. 543, s. 1.)

§ 121-11. Bond required.—Each employee of the State Department of Archives and History commissioned as a special peace officer under this article shall give a bond with a good surety, payable to the State of North Carolina in a sum not less than one thousand dollars (\$1,000.00), conditioned upon the faithful discharge of his duty as such peace officer. The bond shall be duly approved by and filed in the office of the Insurance Commissioner, and copies of the same, certified by the Insurance Commissioner, shall be received in evidence in all actions and proceedings in this State. (1955, c. 543, s. 1.)

§ 121-12. Oaths required.—Before any employee of the Department of Archives and History commissioned as a special peace officer shall exercise any power of arrest under this article, he shall take the oaths required of public officers before an officer authorized to administer oaths. (1955, c. 543, s. 1.)

§ 121-13. Acquisition of portrait of Governor during term of office.—During the term of office of each Governor of this State and at least six months prior to its expiration, the Director of the Department of Archives and History is directed to select some skilled artist to paint a portrait of such Governor, and have the same suitably framed. Upon the painting and acquisition of such portrait, the same shall be placed in some appropriate building to be designated by the State Board of Public Buildings and Grounds and which is located in the city of Raleigh.

The cost of the painting and acquisition of said portraits, including the cost of the frame and other necessary expenses incident thereto, shall be paid from the Contingency and Emergency Fund, but in no instance shall such cost exceed the sum of four thousand dollars (\$4,000.00) for any one portrait.

Provided, that none of said portraits shall be acquired that are done in techniques known as ultra-modern, non-objective, surrealistic, abstract or impressionistic. (1955, c. 1248.)

§ 121-13.1. Preservation and custodial care of State Capitol legislative chambers.—As soon as the General Assembly shall have moved into the new legislative building, the present legislative chambers in the Capitol shall be placed in custody of the State Department of Archives and History to be preserved as historic shrines for the edification of the present and future generations. Insofar as practicable, the aforesaid legislative chambers shall be maintained and preserved in the conditions in which they now are and shall be used exclusively for the purpose of historic shrines and as public attractions; provided, however, that the initial and final meetings of each regular or special session of the General Assembly may commence and adjourn sine die in the aforesaid legislative chambers as a ceremony in perpetuum rei memoriam.

The State Department of Archives and History is hereby entrusted with the responsibility herein specified, as being the agency with the experience and staff best qualified to preserve historic sites and shrines in suitable manner. However, for the purposes of carrying out the provisions of this section, it is hereby directed that such cooperation and assistance shall be made available to the said Department of Archives and History, and such labor supplied as may be feasible, by the General Services Division of the Department of Administration. (1961, c. 724.)

ARTICLE 2.

Tryon's Palace and Tryon's Palace Commission.

§ 121-14. Acceptance and administration of gifts for restoration of Tryon's Palace; execution of deeds, etc.—The Department of Archives and History is hereby authorized and empowered to accept gifts of real or personal property from

any source for the restoration of Tryon's Palace at New Bern, North Carolina, and administer the same. All gifts of moneys received by the Department of Archives and History shall be deposited in a special account with the Treasurer of North Carolina. The Department of Archives and History is hereby given authority to execute such deeds and other instruments as may be necessary. (1945, c. 791, s. 1; 1955, c. 543, s. 8.)

Editor's Note.—The 1955 amendment substituted "Department of Archives and History" for "Department of Conservation and Development."

§ 121-15. Authority to acquire necessary property for restoration when certain funds available.—The Department of Archives and History is hereby authorized and directed to acquire the necessary property in New Bern, North Carolina, for the restoration of Tryon's Palace, when as much as two hundred fifty thousand dollars (\$250,000.00), or securities in said amount as provided in § 121-17, has been provided by private contributions for this purpose: Provided, that the Department of Archives and History at such time shall find that there are reasonable grounds to anticipate that from private donations there will thereafter be provided ample funds to restore the Palace. (1945, c. 791, s. 2; 1949, c. 233, s. 1; 1955, c. 543, s. 8.)

Editor's Note.—The 1949 amendment rewrote this section, and the 1955 amendment substituted "Department of Archives and History" for "Department of Conservation and Development."

§ 121-16. Acquiring lands by purchase or condemnation.—The Department of Archives and History, within the limits and amounts appropriated by the General Assembly and such funds as may be available from donations or otherwise, when the conditions set forth in § 121-15 of this article have been met, is hereby granted the power and authority to purchase sufficient lands for the restoration of said Palace, and the said Department is hereby authorized to accept title to said lands in the name of the State of North Carolina.

The Department of Archives and History shall also have the authority to acquire, by condemnation, under the provisions of chapter forty of the General Statutes of North Carolina, including the provisions of the Public Works Eminent Domain Law, which is hereby made applicable to such proceedings, such areas of land in New Bern, North Carolina, as it may find to be necessary for the restoration of said Palace. (1945, c. 791, s. 3; 1949, c. 233, s. 2; 1955, c. 543, s. 8.)

Editor's Note.—The 1949 amendment rewrote the first paragraph, and the 1955 amendment substituted "Department of Archives and History" for "Department of Conservation and Development" throughout the section.

§ 121-17. Funds deposited with trustee.—The Governor as Director of the Budget shall have full authority and discretion to approve the acceptance of donations of cash or securities irrevocably deposited with a trustee in lieu of any requirement that funds provided by outside sources be turned over to the State, and funds or securities placed in trust by private donors for such purpose shall be deemed to be funds turned over to the State for acquisition and restoration of the Palace. (1945, c. 791, s. 4.)

§ 121-18. Closing streets and including area in restoration project; acquiring area originally included in Palace grounds.—Whereas the said Tryon's Palace and grounds originally included all of that area in the city of New Bern known and designated as George Street between Pollock and South Front Streets, and the title thereto is in the State of North Carolina, subject to the easement for use of said street, and the use of such portion of said George Street is essential for a proper restoration of Tryon's Palace, when the governing body of the city of New Bern under its general authority imposed by law shall close George Street between Pollock and South Front Streets, or such portion thereof as may be found by the

Commission herein authorized to be essential for the purposes of such restoration, the area within such closed street shall be thereafter used exclusively for the restoration of Tryon's Palace. Provided, that the Department of Archives and History is authorized and empowered, in its discretion, to acquire for the use of said Tryon's Palace such part of the area in the city of New Bern originally included in the Palace grounds as may be deemed reasonably necessary for the restoration of said Palace. (1945, c. 791, s. 5; 1949, c. 233, s. 3; 1955, c. 543, s. 8.)

Editor's Note.—The 1949 amendment added the proviso at the end of this section, and the 1955 amendment substituted "Department of Archives and History" for "Department of Conservation and Development."

§ 121-19. Purpose, establishment and composition of Tryon's Palace Commission.—For the purpose of supervising the restoration of Tryon's Palace and for the supervision, management and maintenance thereof after such restoration is completed there shall be a commission, to be known and designated as Tryon's Palace Commission, acting under the general authority of the Department of Archives and History, such Commission to be composed of twenty-five persons, to serve without pay and without expense allowance, to be appointed by the Governor, and in addition to the members so appointed the Governor, the Attorney General, the Director of the Board of Conservation and Development, the Director of the Department of Archives and History, the mayor of the city of New Bern and the chairman of the board of commissioners for Craven County shall serve as ex officio members of said Commission. (1945, c. 791, s. 2; 1955, c. 543, s. 8.)

Editor's Note.—The 1955 amendment, which substituted "Department of Archives and History" for "State Board of Conservation and Development," provides that "the Director of the Department of Conservation and Development" shall continue to be an ex officio member of the "Tryon's Palace Commission."

§ 121-20. Commission to receive and expend funds donated or made available for restoration of Tryon's Palace.—In addition to exercising the powers and duties imposed upon the Tryon Palace Commission by chapter 791 of the Session Laws of 1945 and chapter 233 of the Session Laws of 1949 (§§ 121-14 to 121-19), the Tryon Palace Commission is hereby fully authorized and empowered to receive and expend and disburse, for the restoration of the said Tryon's Palace, all such funds and property which was provided for said purpose by the last will and testament of Maude Moore Latham, deceased, and the said Commission shall likewise have the power and authority to receive and expend all such other funds as may be donated or made available for the purpose of restoring the said Palace or for the purpose of furnishing and equipping same and the grounds on which the same is located at New Bern, North Carolina.

The Tryon Palace Commission is hereby authorized, empowered and directed to designate some person as financial officer and treasurer, to disburse the funds and property devised by Maude Moore Latham to the said Tryon Palace Commission for the aforesaid purpose and all such other funds as may be donated or made available to the said Commission for expenditure for the aforesaid purposes. The said financial officer and treasurer shall be made the custodian of all stocks, bonds and securities and funds hereinbefore referred to and shall be authorized and empowered to sell, convert and transfer any stocks, bonds and securities held for such purpose, subject to, and with the advice and approval of a finance committee to be appointed by the Tryon Palace Commission for such purpose. The sale and conversion and transfer of said securities shall be made when necessary to provide funds required for the said restoration and at such time as, in the opinion of the finance officer and treasurer, when approved by the finance committee, will be to the interests and advantage of the Tryon Palace Commission and the purposes for which said funds and securities were provided.

The finance officer and treasurer aforesaid shall be required to give such bond as, in the opinion of the Tryon Palace Commission, is proper for the faithful performance as finance officer and treasurer, and shall render to the Tryon Palace

Finance Committee, with copies to the Department of Conservation and Development and the State Treasurer, annual or ad interim detailed reports of moneys and/or securities received, exchanged or converted into cash. Checks issued against such funds shall be countersigned by the chairman of Tryon Palace Commission, or by one duly authorized by the said Commission.

The finance officer and treasurer shall serve without compensation, however, any expenses incurred for the faithful performance of said duties, including the cost of the bond, shall be borne by the Tryon Palace Commission, from the proceeds of the funds thus handled.

The Tryon Palace Commission shall have the power and authority in its discretion to call upon the Treasurer of the State of North Carolina to act as treasurer of the said funds and properties and, if so designated, said treasurer shall exercise all the powers and duties herein imposed upon the financial officer and treasurer hereinbefore referred to.

The Tryon Palace Commission is hereby authorized and empowered to expend the funds hereinbefore referred to and it may disburse said funds through the Department of Conservation and Development in the event it is found more practical to do so, and said Commission shall cooperate with the Department of Conservation and Development of the State of North Carolina in the expenditure of the funds for the restoration of said Tryon's Palace, provided by two trust funds created by Maude Moore Latham in her lifetime, which funds shall be expended in accordance with the terms and provisions of said trusts for the purposes therein set out. (1953, c. 1100.)

Editor's Note.—The third and sixth paragraphs refer to the Department of Conservation and Development. The failure to change

the reference to the Department of Archives and History was probably an inadvertence on the part of the legislature.

§ 121-21. Commission authorized to adopt and copyright certain emblems and lease or license the use of reproductions or replicas.—The Tryon Palace Commission is hereby authorized to adopt an official flag, seal, and other emblems appropriate in connection with the management and operation of the Tryon Palace Restoration, and to copyright the same in the name of the State. The Commission, with the approval of the Governor, is authorized to lease or license the use of reproductions or replicas of such flag, seal, and other emblems upon such terms and conditions as it deems advisable. (1957, c. 1449.)

Chapter 122.

Hospitals for the Mentally Disordered.

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ARTICLE 1.*Organization and Management.*

§ 122-1. **Creation of State Department of Mental Health; jurisdiction; transfer of proceedings, appropriations and records.**—There is hereby created a department of State government to be known as the State Department of Mental Health. The State Department of Mental Health is to have jurisdiction over all of the State's mental hospitals, all of the State's residential centers for the mentally

retarded, and joint State and community sponsored mental health clinics. The Department is to have authority and responsibility over all phases of mental health in North Carolina to the extent provided in this chapter including that heretofore vested by law in the State Hospitals Board of Control and in all other State agencies with respect to mental health. Any proceedings pending on June 24, 1963, before the Hospitals Board of Control, or the State Board of Health regarding mental health clinics, or the State Board of Public Welfare regarding the licensing of privately operated mental hospitals or institutions, shall not be abated but shall be automatically transferred to the State Department of Mental Health and shall be conducted in accordance with the provisions of the law governing such proceedings. All unexpended appropriations made to the State Board of Health for the operation of mental health clinics are hereby transferred to the Department of Mental Health. All records, files, and other papers belonging to the State Hospitals Board of Control, the State Board of Health regarding mental health clinics and the State Board of Public Welfare relating to the licensing of privately operated hospitals and institutions, shall be continued as a part of the records and files of the Department of Mental Health. (1963, c. 1166, s. 3.)

Editor's Note.—Former § 122-1 was re-designated by Session Laws 1963, c. 1166, s. 2, as § 122-7. Section 3 of the 1963 act added present § 122-1.

§ 122-1.1. Creation of State Board of Mental Health; appointment of members; terms of office; removal; vacancies; organization; powers and duties; compensation.—There is hereby created a policy-making body within and for the State Department of Mental Health which shall be known as the State Board of Mental Health. The State Board of Mental Health shall consist of fifteen members appointed by the Governor. In order that all sections of the State shall have representation on said Board, the Governor shall name one member from each congressional district of the State and the remaining members at large. The initial members of the State Board of Mental Health shall be the persons serving on the State Hospitals Board of Control immediately prior to June 24, 1963. The initial members shall serve for the duration of the terms to which they were appointed to the Hospitals Board of Control. Upon the expiration of their terms, the members of the State Board of Mental Health shall be appointed as follows: The appointments to fill the three vacancies occurring in 1963 shall be for a term of four (4) years; the appointments to fill two of the three vacancies occurring in 1964 shall be for a term of three (3) years, and the appointment to fill one of the vacancies occurring in 1964 shall be for a term of five (5) years; the appointments to fill four of the six vacancies occurring in 1965 shall be for a term of four (4) years, and the appointments to fill two of the six vacancies occurring in 1965 shall be for a term of six (6) years; and, the appointments to fill the three vacancies occurring in 1966 shall be for a term of five (5) years. Thereafter all appointments shall be for a term of six (6) years. At least two of the members shall be persons duly licensed to practice medicine in North Carolina.

Members of the State Board of Mental Health shall serve for terms as prescribed above and until their successors are appointed and qualified. The Governor shall have the power to remove any member of the Board from office for misfeasance, malfeasance, or nonfeasance. All vacancies occurring for any reason other than the expiration of a member's term are to be filled by appointment of the Governor for the unexpired term.

The Board is authorized to meet and organize and shall, from their number, select a chairman and one or more vice-chairmen. The Board may also elect a secretary who may or may not be a member of the Board.

The Board shall determine policies and adopt necessary rules and regulations governing the operation of the State Department of Mental Health and the employment of professional and staff personnel. The State Board of Mental Health, by and with the approval of the Governor, may terminate for cause the services

of any employee appointed for a specific length of time. In the event of any such termination, severance pay shall be adjusted by the Governor and the Advisory Budget Commission. In addition, the Board is authorized to establish, subject to the approval of the Director of the Budget and the Advisory Budget Commission, new divisions within the Department.

Members of the Board are to be reimbursed for travel expenses and paid a per diem in accordance with the biennial Appropriations Act. (1963, c. 1166, s. 3.)

Editor's Note.—See note to § 122-7.1.

Consent of Senate to Appointments to Former Board.—Under former § 122-7 which provided for a unified board of directors for state hospitals prior to the 1945 amendment, the consent and approval of the Senate was required for a valid appoint-

ment by the Governor to fill unexpired terms as well as full terms. *State v. Croom*, 167 N. C. 223, 83 S. E. 354 (1914), overruling *State Prison v. Day*, 124 N. C. 362, 32 S. E. 748 (1899), and distinguishing *Boynton v. Heartt*, 158 N. C. 488, 74 S. E. 470 (1912). See 21 N. C. Law Rev. 353.

§ 122-1.2. Powers and duties of Department.—All the powers and duties vested in the State Hospitals Board of Control immediately prior to June 24, 1963, are hereby transferred and vested in the State Department of Mental Health, to be carried out pursuant to the policies of the State Board of Mental Health. In addition to these transferred powers and duties, and all other powers and duties of the Department as specified in the General Statutes of North Carolina, the Department shall have the following general powers and duties:

- (1) The Department shall cooperate with the State's correctional and penal institutions by providing psychiatric and psychological service for students, inmates, and for inmates scheduled for parole. In addition to the regular full-time employees of the Department, the Department is authorized to employ part-time professional staff to perform this work. Funds for the payment of these services shall be made available by the respective departments, or, if not available, from those departments, from an allotment by the Governor and the Council of State from the Contingency and Emergency Fund.
- (2) The Department shall cooperate with any local health authorities in augmenting, promoting, and improving local residential programs for the mentally retarded, mentally ill, and inebriate.
- (3) The Department shall cooperate with the State Board of Education, State Department of Public Instruction, the State Board of Health, and the State Commission for the Blind in rehabilitation services for mentally retarded persons through education and training programs.
- (4) The Department shall cooperate with the State Board of Public Welfare and the State Board of Health in their programs of preventive and rehabilitative services through home care and maternal and child health.
- (5) The Department shall sponsor and carry out training and research in the field of mental retardation, mental illness, and inebriety; provided, however, that nothing in this subdivision should prohibit any other agency or institution now engaged in such programs from carrying out training and research in the field of mental retardation, mental illness, and inebriety.
- (6) The Department of Mental Health and the local mental health clinics shall cooperate with the Development Evaluation Clinics and the Child Health Supervisory Clinics in their work relating to retarded children. (1963, c. 1166, s. 3.)

Editor's Note.—See note to § 122-7.2.

§ 122-1.3. Commissioner of Mental Health.—The State Board of Mental Health shall appoint, with the approval of the Governor, a Commissioner of Mental

Health who shall serve for a term of six (6) years and who shall be the chief executive of the State Department of Mental Health. Subject to the supervision, direction and control of the State Board of Mental Health, the Commissioner shall administer the policies, rules and regulations established by the Board. The Commissioner shall be a medical doctor duly licensed in North Carolina with approved training and experience in psychiatry. The salary of the Commissioner shall be fixed by the Governor subject to the approval of the Advisory Budget Commission. The Commissioner shall devote his full time to the duties of his employment as Commissioner of Mental Health.

The Board shall provide the Commissioner with such stenographic and clerical assistance as it may deem necessary. Upon request of the Board, the Department of Administration shall provide suitable office space in the city of Raleigh for the Commissioner. (1963, c. 1166, s. 3.)

§ 122-1.4. Business manager.—The State Board of Mental Health shall appoint a general business manager to be in charge of the Business Administration Division of the Department of Mental Health. The said general business manager shall be a person of demonstrated executive and business ability who shall have had training and experience in fiscal administration and in the management of physical plants, properties and equipment of public institutions or comparable enterprises, and he shall be a person of good character and otherwise qualified to discharge his duties. The salary of the general business manager is to be fixed by the Governor subject to the approval of the Advisory Budget Commission. Subject to the supervision, direction and control of the Board of Mental Health, the general business manager shall perform the duties set out in this chapter and all other duties which the Board may prescribe. Under the direction of the Board of Mental Health, the general business manager shall have full supervision over the fiscal management, and over the management and control of all physical properties and equipment, of the institutions under the control of the Department of Mental Health.

All personnel or employees engaged in any aspect of the business management or supervision of the properties or equipment of any of the institutions under the control of the Department of Mental Health shall be responsible to and subject to the supervision and direction of the general business manager with respect to the performance or exercise of any duties or powers of business management or financial administration.

The general business manager shall be employed for a period of six (6) years from the time of his selection, unless sooner removed by the Board for incompetence or misconduct. He shall devote his full time to the duties of his employment and shall hold no other office or position of employment.

The Board of Mental Health shall provide the general business manager with such stenographic and clerical assistance as it may deem necessary. Upon request of the Board of Mental Health, the Department of Administration shall provide suitable office space in the city of Raleigh for the general business manager in conjunction with the office space provided for the Commissioner of Mental Health. (1963, c. 1166, s. 3.)

§ 122-1.5. Divisions of the Department; deputy directors.—The administration of the Department of Mental Health shall be divided into four divisions: Business Administration, Mental Hospitals, Mental Retardation, and Community Mental Health Services. The Commissioner of Mental Health, with the approval of the State Board of Mental Health, shall appoint a deputy director as head of the Division of Mental Hospitals, a deputy director as head of the Division of Mental Retardation and a deputy director as head of the Division of Community Mental Health Services. The deputy directors of the Divisions of Mental Hospitals and the Divisions of Community Mental Health Services must be medical doctors duly licensed in North Carolina with approved training and experience in psychiatry.

The deputy director of the Division of Mental Retardation must be a medical doctor duly licensed in North Carolina with approved training and experience in psychiatry or pediatrics. (1963, c. 1166, s. 3.)

§ 122-1.6. Applicability of Executive Budget Act, State Personnel Act and Merit System Act.—The State Department of Mental Health shall be subject to the provisions of the Executive Budget Act and the State Personnel Act, articles 1 and 2 of chapter 143 of the General Statutes, respectively. Personnel of the Community Mental Health Services Division of the Department of Mental Health and eligible personnel of those local mental health clinics which choose to participate in the Federal Aid Grant Program shall be subject to the provisions of the Merit System Law, chapter 126 of the General Statutes of North Carolina. (1963, c. 1166, s. 3.)

§ 122-2. Power to acquire and hold property.—Broughton Hospital, Cherry Hospital, Dorothea Dix Hospital, and the John Umstead Hospital, and any institution established, operated and maintained by the North Carolina State Department of Mental Health, may each acquire and hold, for the purpose of its institution, real and personal property by devise, bequest, or by any manner of gift, purchase or conveyance whatsoever. (1899, c. 1, s. 2; Rev., s. 4543; C. S., s. 6152; 1947, c. 537, s. 3; 1955, c. 887, s. 2; 1959, c. 348, s. 2; c. 1002, s. 2; c. 1028, ss. 1-4; 1963, c. 1166, s. 10.)

Editor's Note.—The 1947 amendment deleted the former reference to the State Hospital at Raleigh and inserted the words "and any institution established, operated and maintained by the North Carolina Hospitals Board of Control" since changed by the 1963 amendment.

The 1955 amendment made this section applicable to the State Hospital at Raleigh and the State Hospital at Butner.

The 1959 amendments changed the names of the State Hospital at Morganton, the State Hospital at Goldsboro, the State Hospital at Raleigh and the State Hospital at Butner to Broughton Hospital, Cherry Hospital, Dorothea Dix Hospital and John Umstead Hospital, respectively.

The 1963 amendment substituted "State Department of Mental Health" for "Hospitals Board of Control."

§ 122-2.1. Power to acquire and hold property conveyed by federal government.—The North Carolina State Department of Mental Health shall be and is authorized and empowered to accept, acquire and hold any real or personal property conveyed to it by an agency of the federal government with such revisionary restrictions imposed upon it by federal statute. The North Carolina State Department of Mental Health may use and maintain such property in the same manner as if it held title in fee simple, and may construct such buildings upon it as are necessary to accomplish the purposes of the institution. (1947, c. 537, s. 4; 1963, c. 1166, s. 10.)

Editor's Note. — The 1963 amendment substituted "State Department of Mental Health" for "Hospitals Board of Control."

§ 122-3. Authority of North Carolina State Department of Mental Health as to admission of patients; how commitments made.—The North Carolina State Department of Mental Health shall have the authority to establish rules and regulations not contrary to law governing the admission of persons to any State hospital or other institution under its control which is now or may hereafter be established. Clerks of superior court of the several counties of the State may make commitments to such institutions in the same manner now provided by law for the several State hospitals and training schools.

The North Carolina State Department of Mental Health is hereby given authority to admit certain classes of patients to any one of the institutions under its control and shall notify the clerks of superior court of its action. Sections 116-129 through 116-137 shall apply to colonies for feeble-minded persons and to feeble-minded persons held in any colonies providing that § 116-135 shall apply only to Caswell School. (C. S., s. 6153; 1929, c. 265, s. 1; 1933, c. 342,

s. 1; 1943, cc. 32, 164; 1945, c. 952, s. 9; 1947, c. 537, s. 5; 1957, c. 1232, s. 1; 1959, c. 348, s. 3; c. 1002, s. 3; c. 1028, ss. 1, 2, 3, 5; 1963, c. 451, s. 1; c. 1166, s. 10.)

Editor's Note. — The 1933 amendment placed colored epileptic and feeble-minded under the jurisdiction of the State Hospital at Goldsboro, since renamed. The 1945 amendment substituted "mentally disordered" for "insane." And the 1947 amendment rewrote this section as previously amended.

The 1957 amendment inserted in the first paragraph a reference to the State Hospital at Butner, since renamed.

The 1959 amendments changed the names of the State Hospital at Raleigh, the State Hospital at Morganton, the State Hospital at Butner, the State Hospital at Goldsboro and Caswell Training School to Dorothea Dix Hospital, Broughton Hospital, the John Umstead Hospital, Cherry Hospital and Caswell School, respectively. The second 1959 amendment also deleted, in the former first paragraph, the word "epileptic" in ref-

erence to colored persons to be treated at Cherry Hospital, deleted a former second paragraph relating to care of white epileptics, and substituted "training schools" for "Caswell Training School" at the end of the present first paragraph.

The first 1963 amendment deleted the former first paragraph, which provided that Dorothea Dix, Broughton and John Umstead Hospitals should be exclusively for white persons and Cherry Hospital should be exclusively for colored persons.

The second 1963 amendment substituted "State Department of Mental Health" for "Hospitals Board of Control."

Sections 116-129 to 116-137, referred to in this section, were repealed by Session Laws 1963, c. 1184, s. 7, effective July 1, 1963. For present provisions as to centers for mentally retarded, see article 9 of this chapter.

§ 122-4. Division of territory among the several institutions under the North Carolina State Department of Mental Health.—It shall be the duty of the North Carolina State Department of Mental Health to designate territories for Dorothea Dix Hospital, Broughton Hospital and any State hospitals or institutions now or hereafter established for the admission of the white mentally disordered persons of the State, with authority to change said territories when deemed necessary. It shall notify the clerks of superior court of the counties of the territories designated and of any change of these territories. (C. S., s. 6153; 1929, c. 265, s. 1; 1933, c. 342, s. 1; 1943, cc. 32, 164; 1945, c. 952, s. 9; 1947, c. 537, s. 6; 1959, c. 1028, ss. 1, 3; 1963, c. 1166, s. 10.)

Editor's Note.—The 1947 amendment rewrote this section as changed by previous amendments.

The 1959 amendment changed the names of the State Hospital at Raleigh and the State Hospital at Morganton to Dorothea

Dix Hospital and Broughton Hospital, respectively.

The 1963 amendment substituted "State Department of Mental Health" for "Hospitals Board of Control."

§ 122-5. Care and treatment of Indians in mental hospitals.—The authorities of Dorothea Dix Hospital and Broughton Hospital may also receive for care and treatment mentally disordered, and inebriate Indians who are resident within the State, and who may, within the discretion of the superintendent, be assigned to any of the wards of the hospital. (1919, c. 211; C. S., s. 6154; 1945, c. 952, s. 10; 1947, c. 537, s. 7; 1959, c. 1002, s. 4; c. 1028, ss. 1, 3.)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane," and the 1947 amendment rewrote the section.

The first 1959 amendment deleted the word "epileptic" formerly following "men-

tally disordered." And the second 1959 amendment changed the names of the State Hospital at Raleigh and the State Hospital at Morganton to Dorothea Dix Hospital and Broughton Hospital, respectively.

§ 122-6. Care of epileptics who are mentally disordered.—Whenever it becomes necessary for any person of this State afflicted with the disease known as epilepsy and who is mentally disordered to be confined or to receive hospital treatment, such person shall be committed by the clerks of superior court of the several counties in the manner now provided by law for the commitment of mentally disordered persons to the several hospitals for the mentally disordered. The North Carolina State Department of Mental Health is hereby given the authority to admit to any of the State institutions under its control epileptics who are mentally disordered.

Charges for the patients shall be made in the same manner as now provided by law for care of mentally disordered persons. (1909, c. 910, ss. 1, 2; C. S., s. 6155; 1945, c. 952, s. 11; 1947, c. 537, s. 8; 1957, c. 1232, s. 2; 1959, c. 1002, s. 5; 1963, c. 1166, s. 10.)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane," and the 1947 amendment rewrote the section.

The 1957 amendment inserted in the first sentence the words "and who is mentally disordered."

The 1959 amendment struck out the former last three sentences of the first paragraph and inserted in lieu thereof the present second sentence.

The 1963 amendment substituted "State Department of Mental Health" for "Hospitals Board of Control."

§ 122-7. Incorporation and names of hospitals.—The hospital for the mentally disordered, located near Morganton, shall be and remain a corporation under this name: Broughton Hospital. The hospital for the mentally disordered, located near Raleigh, shall be and remain a corporation under this name: Dorothea Dix Hospital. The hospital for the mentally disordered, located near Goldsboro, shall be and remain a corporation under this name: Cherry Hospital. The hospital for the mentally disordered located near Butner shall be and remain a corporation under this name: John Umstead Hospital. The North Carolina State Department of Mental Health shall be authorized to acquire property and to establish, operate and maintain thereon a hospital or institution and to exercise with respect to such hospital or institution the same property rights and powers as are exercised by it with respect to the State hospitals above referred to. Under their respective names each corporation is invested with all the property and rights heretofore held by each, under whatsoever name called or incorporated, and all other corporate names are hereby abolished. Hereafter in this chapter, when the above names are used, they shall be deemed to relate back to and include the corporation under whatsoever name it might heretofore have had. (Code, ss. 2227, 2240; 1899, c. 1, s. 1; Rev., s. 4542; C. S., s. 6151; 1945, c. 952, s. 8; 1947, c. 537, s. 2; 1955, c. 887, s. 1; 1959, c. 348, s. 1; c. 1002, s. 1; c. 1028, ss. 1-4; 1963, c. 1166, ss. 2, 10.)

Cross Reference.—As to John Umstead Hospital, see §§ 122-92 through 122-98.

Editor's Note.—This section was formerly § 122-1. Former § 122-7 was repealed by Session Laws 1963, c. 1166, s. 1. Section 2 of the 1963 act redesignated former § 122-1 as § 122-7.

The 1945 amendment substituted "mentally disordered" for "insane." Prior to section 7 of the amendatory law the title of this chapter was "Hospital for the Insane."

The 1947 amendment inserted the fifth sentence relating to Hospitals Board of Control.

The 1955 amendment inserted the fourth sentence, relating to the State Hospital at Butner.

Chapter 537 of Session Laws 1947, which amended or inserted various sections of this article, provides in section 1: "The purposes of this act shall be to authorize the North Carolina Hospitals Board of Control to acquire Camp Butner and to establish there an institution similar to the other State hospitals and a colony of feeble-minded. To authorize the transfer there of patients and children from the other institutions under the North Carolina Hospitals Board of Control. To authorize the transfer of pa-

tients or inmates between the institutions under the control of the North Carolina Hospitals Board of Control, and to authorize rules and regulations in regard to admission of persons to these institutions. To simplify the commitment laws for State hospitals; also to provide for release, discharge and termination of commitment of patients. To authorize the North Carolina Hospitals Board of Control to establish requirements for care in State hospitals of this State and to make reciprocal agreements with other states in this regard, and to authorize the interstate transfer of mental patients. To provide a means to obtain authority for emergency life-saving operations on inmates of State institutions, when the family cannot be reached and permission obtained."

The 1959 amendments changed the names of the State Hospital at Morganton, the State Hospital at Raleigh, the State Hospital at Goldsboro and the State Hospital at Butner to Broughton Hospital, Dorothea Dix Hospital, Cherry Hospital and John Umstead Hospital, respectively.

The 1963 amendment substituted "State Department of Mental Health" for "Hospitals Board of Control" in the fifth sentence.

§ 122-7.1. Other mental health facilities for treatment of alcoholism; State alcoholic rehabilitation program; community alcoholism programs.—(a) The North Carolina State Board of Mental Health shall be and hereby is empowered

to set up on property now held or hereafter acquired mental health facilities for the care and treatment of persons suffering from alcoholism. It is authorized to establish rules and regulations for the admission, care, and treatment of such persons, and to determine costs, and to set rates for the maintenance of these persons. The North Carolina State Board of Mental Health may itself operate such facilities directly, or in co-operation with the State Board of Alcoholic Control, or may delegate such operation. The State Board of Health and the State Department of Public Welfare shall act in an advisory capacity in the operation of these facilities.

(b) The State alcoholic rehabilitation program, an agency of the State Board of Mental Health, is designated as the State agency authorized to establish and administer minimum standards for local community alcoholism programs as a condition for participation in the State grants-in-aid.

The State alcoholic rehabilitation program is authorized to develop and promote local community alcoholism programs in accordance with the State policy hereafter expressed:

- (1) It shall be the policy of the State alcoholic rehabilitation program to aid financially the development of local community alcoholism programs only in those communities which have manifested a readiness to contribute to the financial support of such programs, assisted by State grants-in-aid to the extent available.
- (2) It shall be the policy of limiting such grants-in-aid to any community program to a period of two years.

Nothing in this subsection shall be construed to prohibit or limit or encroach upon the operation of community alcoholism programs in existence prior to June 22, 1961. (1949, c. 1206, s. 1; 1961, c. 1173, ss. 1, 2, 4; 1963, c. 1166, ss. 2, 12.)

Editor's Note.—This section was formerly § 122-1.1. Subsection (a) was derived from Session Laws 1949, c. 1206, s. 1, and subsection (b) from Session Laws 1961, c. 1173, ss. 1, 2, 4.

Session Laws 1963, c. 1166, s. 2, redesignated former §§ 122-1.1 and 122-1.2 as §§ 122-8.1 and 122-8.2. However, Session Laws 1955, c. 887, s. 12, already was codified as

§ 122-8.1. Therefore §§ 122-1.1 and 122-1.2 are redesignated herein as §§ 122-7.1 and 122-7.2, respectively.

The 1963 amendment substituted "State Board of Mental Health" for "Hospitals Board of Control."

For appropriation to the State alcoholic rehabilitation program see Session Laws 1961, c. 1173, s. 3.

§ 122-7.2. Establishment and operation of Western Carolina Training School; change of name.—Subject to the availability of funds, the North Carolina State Department of Mental Health is hereby authorized to purchase, construct or otherwise acquire, operate and maintain a training school for mentally retarded children to be known as the Western Carolina Training School. The North Carolina State Department of Mental Health is authorized in its discretion to change the name herein prescribed, by appropriate resolution of the Department, to such other suitable name as it may deem desirable. The Department is authorized to establish rules and regulations for the admission, care, and treatment of such persons, and to determine costs, and to set rates for the maintenance of these persons. The North Carolina State Department of Mental Health may itself operate such facilities directly or may delegate such operation. The State Board of Health and the State Department of Public Welfare shall act in an advisory capacity in the operation of these facilities. (1959, c. 1008; 1961, c. 513; 1963, c. 1166, ss. 2, 10.)

Editor's Note.—This section was formerly § 122-1.2. Session Laws 1963, c. 1166, s. 2, redesignated former §§ 122-1.1 and 122-1.2 as §§ 122-8.1 and 122-8.2. However, Session Laws 1955, c. 887, s. 12, already was codified as § 122-8.1. Therefore, §§ 122-1.1 and 122-1.2 are redesignated herein as §§ 122-7.1 and 122-7.2, respectively.

The 1961 amendment inserted the second sentence.

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "Hospitals Board of Control" and "Department" has been substituted for "Board."

§ 122-8: Repealed by Session Laws 1963, c. 1166, s. 1.

§ 122-8.1. Disclosure of information, records, etc.—No superintendent, physician, psychiatrist or any other officer, agent or employee of any of the institutions or hospitals under the management, control and supervision of the North Carolina State Department of Mental Health shall be required to disclose any information, record, report, case history or memorandum which may have been acquired, made or compiled in attending or treating an inmate or patient of said institutions or hospitals in a professional character, and which information, records, reports, case histories and memorandums were necessary in order to prescribe for or to treat said inmate or patient or to do any act for him in a professional capacity unless a court of competent jurisdiction shall issue an order compelling such disclosure: Provided that where a person or persons are defendants in criminal cases and a mental examination of such defendants has been ordered by the court, the North Carolina State Department of Mental Health through its agents and officers may transmit the results or the report of such mental examination to the clerk of said court and to the solicitor or prosecuting officer and to the attorney or attorneys of record for the defendant or defendants. (1955, c. 887, s. 12; 1963, c. 1166, s. 10.)

Cross Reference.—For later provisions similar to this section, see § 122-52. 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "Hospitals Board of Control."

Editor's Note.—Pursuant to Session Laws

§ 122-9. Building committee; selection; duties.—It shall be the duty of the State Board of Mental Health herein provided for to select and appoint from its number a building committee, who shall be specially charged with the duty of supervision of the buildings to be built or repaired from appropriations made to said institutions by the General Assembly of this State. (1921, c. 183, s. 4; C. S., s. 6159(c); 1943, c. 136, s. 4; 1963, c. 1166, s. 13.)

Editor's Note.—Prior to the 1943 amendment there was a building committee for each institution.

The 1963 amendment substituted "State Board of Mental Health" for "board of directors."

Architect Not State Employee.—An architect selected by the building committee

under the authority conferred by this section, and who is to bear all the expenses incidental to carrying out his work, being paid on the basis of a percentage of the moneys expended, is an independent contractor and not a State employee. Underwood v. Com'r of Internal Revenue, 56 F (2d) 67 (1932).

§ 122-10: Repealed by Session Laws 1957, c. 1232, s. 4.

§ 122-11. Meetings of Board.—The State Board of Mental Health shall convene annually at each of the institutions enumerated in § 122-7 at a time to be fixed by such Board and at such other times as it shall appoint, and investigate the administration and condition of said institutions. (1899, c. 1, s. 8; Rev., s. 4450; 1917, c. 150, s. 1; C. S., s. 6161; 1943, c. 136, s. 5; 1963, c. 1166, s. 13.)

Editor's Note.—Prior to the 1943 amendment the former boards were required to meet in April and at such other times as they should appoint, also to make reports

to the General Assembly.

The 1963 amendment substituted "State Board of Mental Health" for "board of directors."

§§ 122-11.1 to 122-11.3: Repealed by Session Laws 1963, c. 1166, s. 1.

§ 122-11.4. Monthly reports to Commissioner of Mental Health.—The superintendent of each of said institutions shall make monthly reports to the Commissioner of Mental Health in such manner and detail as the North Carolina State Department of Mental Health may prescribe. (1943, c. 136, s. 8; 1959, c. 1002, s. 10; 1963, c. 1166, s. 10.)

Editor's Note.—The 1959 amendment substituted "Commissioner of Mental Health" for "General Superintendent of Mental Hygiene" and "North Carolina Hospitals Board

of Control" for "board of directors."

The 1963 amendment substituted "State Department of Mental Health" for "Hospitals Board of Control."

§ 122-11.5: Repealed by Session Laws 1945, c. 925, s. 4.

§ 122-11.6. Outpatient mental hygiene clinics.—The North Carolina State Department of Mental Health is authorized to establish, in its discretion, outpatient mental hygiene clinics at any of the institutions under its control, and to operate such outpatient facilities as are essential for its inservice training program in psychiatric care and treatment. (1943, c. 136, s. 11; 1955, c. 155, s. 2; 1963, c. 1166, s. 10.)

Editor's Note.—The 1955 amendment, effective July 1, 1955, rewrote this section. The 1963 amendment substituted "State

Department of Mental Health" for "Hospitals Board of Control."

§§ 122-11.7, 122-11.8: Repealed by Session Laws 1963, c. 1166, s. 1.

§ 122-12. Bylaws and regulations.—The State Board of Mental Health shall make all necessary bylaws and regulations for the government of each of said institutions, among which regulations shall be such as shall make the institutions as nearly self-supporting as is consistent with the purpose of their creation. (1899, c. 1, s. 14; Rev., s. 4551, 1917, c. 150, s. 1; C. S., s. 6162; 1943, c. 136, s. 10; 1963, c. 1166, s. 13.)

Editor's Note.—By virtue of the 1943 amendment the first part of this section was rephrased.

The 1963 amendment substituted "State Board of Mental Health" for "board of directors."

State with respect to the operation of the State Hospital for the Insane at Raleigh, now named the Dorothea Dix Hospital, as well as for the operation of similar institutions. *State v. Security Nat. Bank*, 207 N. C. 697, 178 S. E. 487 (1935).

This section declares the policy of the

§ 122-13. Transfer of patients from one hospital to another; transfer of funds.—The North Carolina State Board of Mental Health is authorized to make such rules and regulations as in its discretion may seem best for the transfer of patients from one State hospital or institution under its control to another State hospital or institution under its control; and it is further authorized and empowered to transfer from one State hospital for the mentally disordered any funds appropriated for permanent improvement or maintenance, if in their discretion and judgment it may become advisable or necessary. (1919, c. 330; C. S., s. 6163; 1947, c. 537, s. 9; 1963, c. 1166, s. 12.)

Editor's Note.—The 1947 amendment rewrote this section.

The 1963 amendment substituted "State

Board of Mental Health" for "Hospitals Board of Control."

§ 122-13.1. Transfer of patients from Psychiatric Training and Research Center at Chapel Hill to State hospital or institution under control of North Carolina State Department of Mental Health.—When it is deemed desirable that any patient of the Psychiatric Training and Research Center at the South Wing of the North Carolina Memorial Hospital at Chapel Hill be transferred to a State hospital or institution under the control of the North Carolina State Department of Mental Health such a transfer may be effected upon the approval of the superintendent of the appropriate State hospital and the recommendation of the Director of the Inpatient Service of the Psychiatric Training and Research Center. A certified copy of the commitment on file at the Psychiatric Training and Research Center and the order of the Director of the Inpatient Service shall be sufficient warrant for holding the mentally disordered person by the officials of the appropriate State hospital. (1955, c. 1274, s. 1; 1963, c. 1166, s. 10.)

Editor's Note.—The 1963 amendment substituted "State Department of Mental Health" for "Hospitals Board of Control."

§ 122-14. Delivery of inmates to federal agencies.—The directors and superintendents of the several State hospitals are hereby authorized, empowered and directed to transfer and deliver to the United States Veterans Bureau or other appropriate department or bureau of the United States government or to the

representatives or agents of such Veterans Bureau or other department or bureau of said government, all inmates or prisoners, being soldiers or sailors who have served at any time in any branch of the military or naval forces of the United States, who are now in or may hereafter be committed to said hospitals. And said directors and superintendents shall take from such Veterans Bureau or other department or bureau of said government, or its duly accredited representatives or agents, receipts or acknowledgments showing the delivery of such inmates or prisoners so transferred to the United States government for the purpose of treatment under the laws and regulations of said government with respect to insane persons who have served in the military or naval forces of the United States. (1925, c. 51, s. 1; 1945, c. 925, s. 5; 1947, c. 623, s. 1; 1953, c. 675, s. 15; 1959, c. 1002, s. 11.)

Editor's Note.—The 1945 amendment made this section applicable to the State Hospital at Morganton, and the 1947 amendment struck out the word “insane” formerly appearing before the word “inmates” in line near the middle of the section.

The 1953 amendment substituted “or” for “of” immediately before the word “ac-

knowledgments” near the end of the section.

The 1959 amendment substituted near the beginning of the section “several State hospitals” for “State Hospital at Raleigh, the State Hospital at Morganton and the State Hospital at Goldsboro.”

Cited in *State v. Security Nat. Bank*, 207 N. C. 697, 178 S. E. 487 (1935).

§ 122-15. Transfer of inmates to general wards.—The directors and superintendents of Dorothea Dix Hospital and Cherry Hospital are hereby authorized, empowered and directed to transfer from the wards in said hospitals set apart for the dangerous insane to the general wards any of the inmates or prisoners therein who, in the judgment of said directors and superintendents, have reached such a state of improvement in their mental condition as to justify such transfer. (1925, c. 51, s. 2; 1959, c. 1028, ss. 1, 2.)

Editor's Note. — The 1959 amendment changed the names of the State Hospital at Raleigh and the State Hospital at Golds-

boro to Dorothea Dix Hospital and Cherry Hospital, respectively.

§ 122-16. Board may make ordinances; penalties for violation.—Authority is hereby conferred upon the State Board of Mental Health of the State hospitals for the insane and upon the board of directors and superintendent of the North Carolina School for the Deaf to enact ordinances for the regulation and department of persons in the buildings and grounds of the institutions, and for the suppression of nuisances and disorder, and when adopted the ordinances shall be recorded in the proceedings of the said Board and printed, and a copy posted at the entrance to the grounds, and not less than three copies posted at different places within the grounds, and when so adopted and printed, and posted up, the ordinances shall be binding upon all persons coming within the grounds. Such boards are empowered and directed to prescribe penalties for the violation of each section of the ordinances so adopted, and if any person violates a section of the ordinances, the penalty prescribed may be recovered in a civil action instituted in the name of the hospital against the person offending, before any justice of the peace in the county in which the hospital is situated, and the sum so recovered shall be used as the State Board of Mental Health shall direct. Violation of any ordinances so made shall be a misdemeanor, punishable by fine not exceeding fifty dollars or imprisonment not exceeding thirty days. (1899, c. 1, s. 54; 1901, c. 627; Rev., ss. 3695, 4559; 1915, c. 14, s. 2; 1917, c. 150, s. 1; C. S., s. 6164; 1963, c. 1166, s. 13.)

Editor's Note.—The 1963 amendment substituted “State Board of Mental Health”

for “board of directors” preceding “of the State hospitals.”

§ 122-17. Executive committee appointed.—The State Board of Mental Health shall, out of their number, appoint five members as an executive committee, who shall hold their respective offices as such for one year, and shall have such powers and be subject to such duties as the State Board of Mental Health may

delegate to them. (1899, c. 1, s. 6; Rev., s. 4548; 1917, c. 150, s. 1; C. S., s. 6165; 1945, c. 925, s. 6; 1963, c. 1166, s. 13.)

Editor's Note.—The 1945 amendment increased the members from three to five. The 1963 amendment substituted "State Board of Mental Health" for "board of directors."

§ 122-18: Repealed by Session Laws 1957, c. 1232, s. 7.

§ 122-19. **Application of funds belonging to hospitals.**—All moneys and proceeds of property given to any hospital, and all moneys arising from the sale of any real estate which may be owned by such hospital shall be paid into the State treasury, and all donations in which there shall be special directions for their application shall be kept as a distinct fund and faithfully applied, as the donor may have directed; and the same hospital shall be supported by appropriations from the State treasury. But the proceeds arising from the sale of personal property belonging to a hospital, the board paid by private patients, rentals from real estate, and money from any other sources, except the sale of real estate, shall remain with the hospital and be used as the State Board of Mental Health may determine. An account of the proceeds of all such income and its expenditures shall be carefully kept and published in the report to the General Assembly. (1899, c. 1, s. 34; Rev., s. 4552; C. S., s. 6167; 1963, c. 1166, s. 13.)

Editor's Note.—The 1963 amendment substituted "State Board of Mental Health" for "board of directors."

§ 122-19.1: Repealed by Session Laws 1963, c. 668, s. 4, effective July 1, 1963.

§ 122-20. **Board of Public Welfare and General Assembly, visitors; Board to make report.**—The State Board of Public Welfare and the members of the General Assembly shall be ex officio visitors of all hospitals for the insane. It shall be the duty of the State Board of Public Welfare to visit the hospitals from time to time, as they may deem expedient, to examine into their condition, and make report thereon to the General Assembly, with such suggestions and remarks as they may think proper. (1899, c. 1, s. 37; Rev., s. 4554; 1917, c. 150, s. 1; C. S., s. 6168; 1957, c. 100, s. 1.)

Cross Reference.—For later provisions similar to this section, see § 122-53.

Editor's Note.—The 1957 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare."

§ 122-21. **Fiscal year.**—The close of the fiscal year shall be that established for all State agencies. (1899, c. 1, s. 38; Rev., s. 4558; C. S., s. 6169; 1947, c. 537, s. 10.)

Editor's Note.—The 1947 amendment rewrote this section.

§ 122-22. **Court may remit penalties imposed under this chapter.**—Whenever suit shall be brought against a sheriff or board of county commissioners for the recovery of a penalty prescribed for doing an act forbidden, or failure to do any act required by this chapter, the judge or justice of the peace before whom the action is tried may order so much of said penalty to be remitted as in his judgment should be remitted to meet the ends of justice, and he shall enter up judgment for the amount of the penalty, to be discharged by the payment of such a sum as he may think just, and the costs of the action. In fixing the amount to be remitted (if the judge or justice should think the remission of any part proper), he shall consider the costs and expenses that the plaintiff may have been put to, and he should also consider the conduct of the defendants; and there ought to be no remission when the act of the defendants is wanton or contumacious, or is grossly negligent. (1899, c. 1, s. 57; Rev., s. 4557; C. S., s. 6170.)

§ 122-23. Assisting inmate to escape; misdemeanor.—If any person shall assist any inmate of any State hospital to escape therefrom he shall be guilty of a misdemeanor. (1899, c. 1, s. 53; Rev., s. 3694; C. S., s. 6171.)

Cross Reference.—For later provisions similar to this section, see § 122-54.

ARTICLE 2.

Officers and Employees.

§ 122-24. Directors, superintendents and staff members not personally liable.—No director or superintendent or any staff member under the supervision and direction of the director or superintendent of any State hospital shall be personally liable for any act or thing done under or in pursuance of any of the provisions of this chapter. (1899, c. 1, s. 31; Rev., s. 4560; C. S., s. 6172; 1961, c. 511, s. 1.)

Editor's Note.—The 1961 amendment inserted in this section the words "or any staff member under the supervision and direction of the director or superintendent."

Liability for Wrongful Acts of Discharged Patient.—The directors and superintendent of a hospital for the insane act-

ing under the provisions of section 122-67, in discharging or releasing a patient therefrom, cannot be held responsible in damages by the subsequent killing by such patient of another under a charge of negligence. *Bollinger v. Rader*, 151 N. C. 383, 66 S. E. 314 (1909).

§ 122-25. Superintendents and business managers of hospitals and residential centers for the retarded; medical and rehabilitation personnel.—The Commissioner of Mental Health, with the approval of the State Board of Mental Health, shall appoint a medical superintendent for each hospital. The medical superintendent shall be a medical doctor duly licensed in North Carolina with approved training and experience in psychiatry. The appointment shall be for a term of six (6) years. The Commissioner of Mental Health shall also, with the approval of the State Board of Mental Health, appoint for a term of six (6) years a superintendent of each residential center for the retarded. Such superintendent shall be a medical doctor duly licensed by the State of North Carolina with approved training and experience in pediatrics or psychiatry.

The superintendent of each institution under the jurisdiction of the Department of Mental Health shall be responsible for the employment of all medical and rehabilitation personnel, subject to the approval of the Commissioner of Mental Health.

The business manager of each State mental hospital or each residential center for the retarded shall be appointed by the general business manager with the approval of the State Board of Mental Health. The business manager of each institution should be a person of demonstrated executive and business ability who has had training and experience in fiscal administration and in the management of physical plants, properties and equipment of public institutions or comparable enterprises, and who is a person of good character and otherwise qualified to discharge his duties. (1899, c. 1, s. 69; Rev., s. 4561; 1917, c. 150, s. 1; C. S., s. 6173; 1963, c. 1166, s. 4.)

Editor's Note.—The 1963 amendment rewrote this section.

§ 122-26: Repealed by Session Laws 1957, c. 1232, s. 8.

§ 122-27. Superintendent to notify of escape or revocation of probation of inmate.—When any patient of a State hospital who has been released therefrom on probation has breached the conditions of his probation, or when any patient has escaped, the superintendent of the hospital shall immediately notify the sheriff and clerk of court of the county from which the patient was committed; if the superintendent has reasonable grounds to believe that the patient is in any other county, he may also notify the sheriff of such county. Upon receipt of such notice,

it shall be the duty of the sheriff to return such patient to the hospital from which he has escaped or has been released on probation. The expense of returning such patient shall be borne by the county of such patient's legal settlement. (1899, c. 1, s. 27; Rev., s. 4563; C. S., s. 6175; 1927, c. 114; 1945, c. 952, s. 12; 1953, c. 256, s. 1; 1955, c. 887, s. 3.)

Editor's Note.—The 1953 amendment eliminated a former requirement that the superintendent notify the committing physician, and the 1955 amendment rewrote the section.

§ 122-28. Officers and employees not to accept outside compensation; exceptions.—No physician or doctor employed by the Department of Mental Health shall receive any compensation, other than that paid by the State or local community, except when so authorized by the Department of Mental Health. (1899, c. 1, s. 10; Rev., s. 4564; C. S., s. 6176; 1957, c. 1232, s. 9; 1963, c. 1166, s. 5.)

Editor's Note.—The 1957 amendment rewrote this section which formerly related to assistant physicians. The 1963 amendment rewrote this section, which after the 1957 amendment related to appointment and removal of physicians.

§§ 122-29, 122-30: Repealed by Session Laws 1957, c. 1232, ss. 10, 11.

§ 122-31. Salaries of superintendent and employees.—The State Board of Mental Health shall fix the salaries and compensation of the superintendent, and the officers and employees whose services may be necessary for the management of the hospitals under charge of said Board. The salaries shall not be diminished during the term of the incumbents. (1899, c. 1, s. 12; Rev., s. 4567; 1917, c. 150, s. 1; C. S., s. 6179; 1953, c. 256, s. 2; 1963, c. 1166, s. 13.)

Editor's Note.—The 1953 amendment struck out the former last sentence of this section which read: "The salary of the superintendent shall be a sum certain, without other compensation or allowance, except such rooms in the hospital for the use of his family, and such articles of food produced on the premises, as said board of directors may permit." The 1963 amendment substituted "State Board of Mental Health" for "board of directors."

§ 122-32. Directors to keep record of proceedings; clerk.—The State Board of Mental Health shall cause all their proceedings to be faithfully and carefully written and recorded in books, and to this end may employ a clerk, and pay him a reasonable compensation for his services. The books shall, at all times, be open to the inspection of the General Assembly. (1899, c. 1, s. 36; Rev., s. 4568; 1917, c. 150, s. 1; C. S., s. 6180; 1963, c. 1166, s. 13.)

Editor's Note.—The 1963 amendment substituted "State Board of Mental Health" for "board of directors."

§ 122-33. Superintendent or business manager may appoint employees as policemen, who may arrest without warrant.—The superintendent or business manager of each hospital and training school and the superintendent of the North Carolina School for the Deaf are empowered to appoint such number of discreet employees of their respective hospitals or schools as they may think proper, special policemen, and within the grounds of such hospital or school the said employees so appointed policemen shall have all the powers of policemen of incorporated towns. They shall have the right to arrest without warrant persons committing violations of the State law or the ordinances of that hospital or school, in their presence, and within the grounds of their hospital or school, and carry the offenders before some justice of the peace for trial. The justice of the peace shall issue a warrant and proceed as in other criminal cases before him. (1899, c. 1, s. 55; 1901, c. 627; Rev., s. 4569; C. S., s. 6181; 1921, c. 207; 1957, c. 1232, s. 12; 1959, c. 1002, s. 12.)

Editor's Note.—The 1957 amendment inserted the words "or business manager" near the beginning of this section. The 1959 amendment rewrote the first sentence of this section.

§ 122-34. Oath of special policemen.—Before exercising the duties of a special policeman, the employees appointed, as in the preceding section, shall take an oath of office before some justice of the peace of the county, or other officer empowered to administer oaths, and the same shall be filed with the records of the State Department of Mental Health. The oath of office shall be as follows: State of North Carolina, County.

I,, do solemnly swear (or affirm) that I will well and truly execute the duties of office of special policeman in and for the State hospital at, according to the best of my skill and ability and according to law; and that I will use my best endeavors to enforce all the ordinances of said hospital, and to suppress nuisances, and to suppress and prevent disorderly conduct within said grounds. So help me, God.

Sworn and subscribed before me, this day of, A. D. (1899, c. 1, s. 56; 1901, c. 627; Rev., s. 4570; C. S., s. 6182; 1963, c. 1166, s. 11.)

Editor's Note.—The 1963 amendment substituted "State Department of Mental Health" for "board of directors."

§ 122-35. Volunteer firemen among employees rewarded.—The State Department of Mental Health shall have power to provide benefits, to be paid to any employee of the hospital who shall be injured while discharging the duties of a volunteer fireman. And the Board may inaugurate a system by which a fund is raised to provide suitable benefits for said firemen, and may contribute from the funds of the hospital for that purpose. The volunteer firemen at the various hospitals shall not share in the State Firemen's Relief Fund. (1899, c. 1, s. 59; Rev., s. 4571; 1917, c. 150, s. 1; C. S., s. 6183; 1963, c. 1166, s. 11.)

Editor's Note.—The 1963 amendment substituted "State Department of Mental Health" for "board of directors."

ARTICLE 2A.

Local Mental Health Clinics.

§ 122-35.1. Designation of State Department of Mental Health as State's mental health authority; outpatient mental health clinics; support of local mental health clinics authorized.—The State Department of Mental Health is hereby designated as the State's mental health authority for purposes of administering federal funds allotted to North Carolina under the provisions of the National Mental Health Act and similar federal legislation pertaining to mental health activities. The State Department of Mental Health is further designated as the State agency authorized to administer minimum standards and requirements for mental health clinics as conditions for participation in federal-State grants-in-aid, and is authorized to promote and develop community mental health outpatient clinics in accordance with the provisions of this chapter: Provided, that nothing in this chapter shall be construed to prohibit the operation of outpatient mental health clinics by the State Department of Mental Health at any of the institutions under the control of the State Department of Mental Health, or the operation of an outpatient mental health clinic at the North Carolina Memorial Hospital in Chapel Hill or at any other hospital acceptable to the State Department of Mental Health.

It shall be the policy of the State Department of Mental Health to promote the establishment of mental health clinics in those localities which have shown a readiness to contribute to the financial support of such clinics, assisted by the federal and State grants-in-aid to the extent available.

The governing authorities of local governmental units are authorized to appropriate funds for the support or partial support of mental health clinics which serve such localities whether or not the facilities of the clinic are physically located within the boundaries of such cities, towns, or counties, and whether or not such clinics

are owned or operated by the local governmental units, and such support or partial support is hereby declared to be a necessary expense within the meaning of Article VII, § 7 of the North Carolina Constitution. The funds so appropriated may be included as an appropriation in the general fund of the local governmental unit, or may, in the case of a county, be included in the special tax levied for the preservation and promotion of the public health. (1963, c. 1166, s. 6.)

Editor's Note.—Former § 122-35.1 was redesignated by Session Laws 1963, c. 1166, s. 2, as § 122-36. Section 6 of the 1963 act added article 2A, including present § 122-35.1, to this chapter. See Editor's note to § 122-36.

§ 122-35.2. Duties of Community Mental Health Services Division.—Child-guidance clinics, adult clinics, all-purpose clinics (i.e., clinics serving both children and adults), and after-care treatment clinics, and a State-wide program of mental health education are to be developed and administered by the Community Mental Health Services Division of the Department of Mental Health. This Division is designed to augment, promote, and improve, if necessary, the expansion of already existing services in general hospitals or clinics that help to conserve the mental health of the people of North Carolina. The Division will also encourage, implement, and provide assistance for research into various aspects of mental health by the local clinics. (1963, c. 1166, s. 6.)

§ 122-35.3. Joint State and community operation of mental health clinics.—The Department of Mental Health is authorized to establish community mental health services within a framework of policies which provide for the joint operation of mental health clinics within local communities which agree to participate financially and otherwise in the program. This is to be a partnership arrangement in which the Department of Mental Health represents the State of North Carolina and a local mental health authority represents the community. The Department of Mental Health, through the Community Mental Health Services Division, is authorized to maintain standards for local mental health clinics, to advise agencies interested in community mental health, and cooperate with other local health services. (1963, c. 1166, s. 6.)

§ 122-35.4. Local mental health authorities.—Local mental health services, when approved by the Department of Mental Health, may be established by (i) any board of county commissioners, (ii) any governing body of a municipality with a population in excess of 25,000 or (iii) any independent community agency interested in mental health. The governmental unit or agency establishing the local mental health service shall be known as a "local mental health authority." The local mental health authority may establish or designate an advisory board. (1963, c. 1166, s. 6.)

§ 122-35.5. Joint county and city mental health services.—Joint mental health services may be established by: (i) Two or more counties, (ii) a combination of two or more cities with a combined population in excess of 25,000 or (iii) a combination of one or more cities with one or more counties.

Joint mental health services may be jointly operated, or one participating city or county may contract to provide said services for any other city or county. The costs of joint services are to be apportioned among the participating units on the basis of the population of each participating unit. The local governmental units establishing the joint mental health services shall be known as the "local mental health authority." (1963, c. 1166, s. 6.)

§ 122-35.6. Establishment of local mental health clinics; establishment and operation of other clinics.—Any local mental health authority desiring to establish a mental health clinic shall submit an application to the Department of Mental Health. If the Department of Mental Health gives favorable consideration to the application, the Department of Mental Health may include the State's share of the cost of operating the proposed local clinic in its next budget request, or it

may request an allotment of funds for this purpose from the Contingency and Emergency Fund.

All local clinics are to be considered a joint undertaking by the Department of Mental Health representing the State and the local mental health authority representing the area served by the clinic.

All procedures regarding the establishment and operation of the clinics not covered under the provisions of this article may be prescribed by regulation of the State Board of Mental Health. (1963, c. 1166, s. 6.)

§ 122-35.7. Supervision of local clinics; clinical directors.—Each clinic established pursuant to the provisions of this article must be operated under the supervision of the State Department of Mental Health. There must be a residential clinical director of each clinic who shall be responsible for its administration. The clinical director shall be a medical doctor duly licensed by the State of North Carolina with adequate training and experience in psychiatry acceptable to the Commissioner of Mental Health. (1963, c. 1166, s. 6.)

§ 122-35.8. Appointment of local clinical directors and staff.—The local mental health authority shall appoint, subject to the approval of the Commissioner of Mental Health, the clinical director of the local mental health clinic. The director of the clinic shall appoint all members of the staff of the clinic. (1963, c. 1166, s. 6.)

§ 122-35.9. Physical property to be furnished by local or federal authorities.—All real estate, buildings, and equipment necessary to the operation of the local mental health clinic must be supplied from local or federal funds or both, and such property shall be and remain the property of the local mental health authority. (1963, c. 1166, s. 6.)

§ 122-35.10. Fees for services.—The collection of fees for services performed in the child-guidance clinic shall be optional with the local mental health authority. The local clinics serving adult persons shall provide for the collection of fees from individuals accepted for services who are able to pay for such services. No person is to be refused services because of the inability to pay the fees. The fees to be charged are to be fixed by the local mental health authority and all funds so collected shall be utilized for the fiscal operation of the local mental health authority. (1963, c. 1166, s. 6.)

§ 122-35.11. Local funds for mental health clinics.—The local mental health authority shall be responsible for obtaining the necessary local funds for the support of the clinic. All such funds are to be placed under the direction of the local mental health authority and are to be used for the purchase of land, buildings, equipment, secretarial services, supplies, maintenance, and to pay the professional staff. (1963, c. 1166, s. 6.)

§ 122-35.12. Grants-in-aid to local mental health authorities.—From State and federal funds available to the Department of Mental Health, the Department is to make grants-in-aid to the local mental health authorities as follows: Two thirds of the first thirty thousand dollars (\$30,000) of the approved budget of the local mental health authority and one half of the remainder of the approved budget. Where the actual expenditures of the local mental health authority are less than the approved budget, the State and federal grants-in-aid are to be determined on the basis of actual expenditures rather than the approved budget. For purposes of this section the terms approved budget and actual expenditures are not to include the items specified in G. S. 122-35.9. (1963, c. 1166, s. 6.)

ARTICLE 3.

Admission of Patients; General Provisions.

§ 122-36. Definitions.—(a) The “county of residence” of an alleged mentally ill, mentally retarded, or inebriate person shall be the county of his actual residence

at the time of his hospitalization, notwithstanding that such person may have been temporarily out of the county of his residence, in a hospital, or under court order a patient of some other state institution at the time of his hospitalization. A county or residence shall not have been changed by virtue of a person being temporarily out of his county, in a hospital, or confined under court order.

(b) The words "hospitalize" or "hospitalization" shall mean those processes as promulgated in this chapter whereby an alleged mentally ill or mentally retarded person or alleged inebriate may be placed in an appropriate State hospital for the mentally ill or State residential center for the mentally retarded. The terms shall include voluntary, medical certification, emergency and judicial procedures.

(c) The word "inebriate" shall mean a person habitually so addicted to alcoholic drinks or narcotic drugs or other habit forming drugs as to have lost the power of self-control and that for his own welfare or the welfare of others is a proper subject for restraint, care, and treatment.

(d) The words "mental illness" shall mean an illness which so lessens the capacity of the person to use his customary self-control, judgment, and discretion in the conduct of his affairs, and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control. The words "mentally ill" shall mean a person with a mental illness.

(e) The words "mentally retarded" shall mean a person who is not mentally ill but whose mental development is so retarded that he has not acquired enough self-control, judgment, and discretion to manage himself and his affairs, and for whose own welfare or that of others, supervision, guidance, care, or control is necessary or advisable.

(f) The words "qualified physician" shall mean a medical doctor who is duly licensed by this State to practice medicine; provided, however, that no physician is to be considered a "qualified physician" with respect to any procedure to hospitalize any person who is related by blood or marriage to the said physician. (1899, c. 1, s. 28; Rev., s. 4574; C. S., s. 6189; 1945, c. 952, s. 18; 1947, c. 537, s. 12; 1957, c. 1232, s. 13; 1963, c. 1166, s. 2; c. 1184, s. 1.)

Editor's Note.—Session Laws 1963, c. 1184, s. 1, effective July 1, 1963, rewrote this article, which formerly consisted of §§ 122-35.1 to 122-65, and designated the

sections therein as §§ 122-36 to 122-55.

For article on hospitalization of the mentally ill, see 31 N. C. Law Rev. 274.

§ 122-37. Findings as to residence reported by clerk; mentally ill or inebriates not to become residents.—In every examination of an alleged mentally ill person or alleged inebriate it shall be the duty of the clerk to particularly inquire whether the proposed patient is a resident of this State, and he shall state his findings upon the subject in his report to the superintendent of the hospital. If it is not possible to ascertain the legal residence of the proposed patient the clerk shall give all available information concerning the proposed patient and his past residence to the superintendent. The alleged mentally ill person or alleged inebriate shall then be treated as a bona fide resident until facts are presented to the clerk of court warranting a finding of nonresidence. A finding of residence by the clerk shall in no case have a binding effect, and if facts are later ascertained showing legal residence in another state the procedure set forth in G. S. 122-38 shall be followed.

No person who shall have removed into this State while mentally ill or inebriate, or while under care in an institution in any other state, nor any person not a resident of North Carolina but under care in an institution, public or private, in this State shall be considered a resident; and no length of residence in this State of such a person, while mentally ill or inebriate, or under care shall be sufficient to make him a resident of this State or entitled to State institutional care. (1899, c. 1, s. 18; Rev., ss. 3591, 4587, 4588; C. S., ss. 6187, 6188; 1945, c. 952, ss. 16, 17; 1947, c. 537, s. 11; 1953, c. 256, s. 3; 1957, c. 1386; 1963, c. 1184, s. 1.)

§ 122-38. Proceedings in case of mentally ill or inebriate citizen of another state.—If any person not a citizen of this State but of another state of the

United States shall be ascertained to be a proper subject for care and treatment in an institution of this State for the mentally ill or inebriate, the clerk of the superior court shall hospitalize such person to the proper State institution and shall record on the order of hospitalization that the person being hospitalized is not a resident of this State. He shall also give on the order of hospitalization such information as is available in regard to the proper residence of the person being hospitalized. Upon the admission of such person to the hospital, the superintendent of the hospital shall notify the State Department of Mental Health that such person appears to be a resident of another state, so that the State Department of Mental Health can take steps to establish such person's residence and have him transferred to the state in which he is legally resident.

After the legal residence of such alleged mentally ill person or alleged inebriate has been verified and confirmed by the state of his residence, such person shall be transferred to the state of his residence. If that state shall not provide for his removal to that state within a reasonable time, the superintendent of the State hospital shall cause him to be conveyed directly from the State hospital to the state of his legal residence and delivered there to the superintendent of the proper state hospital.

The cost of such proceedings and conveyance away from the State shall be borne by the county in which the person shall have been adjudged a proper subject for restraint, care, and treatment. (1899, c. 1, s. 16; Rev., s. 4584; C. S., s. 6210; 1945, c. 952, s. 33; 1947, c. 537, s. 18; 1963, c. 1184, s. 1.)

§ 122-39. Reciprocal agreements with other states to set requirements for State hospital care and release of patients.—The State Department of Mental Health is authorized to enter into reciprocal agreements with other states regarding the return of residents to or from such other states and for the purpose of fixing the requirements whereby a patient under hospitalization to a state hospital in such other state or states may be released and come into this State while still on conditional release from the state hospital of such other state or states. The said Department may also enter into reciprocal agreements with another state or states to fix and establish the requirements whereby a patient under hospitalization in a State hospital in this State may be released and go into such other state or states on conditional release from a State hospital in this State. Any such patient so released from a state hospital or other institution in another state or states for the purpose of coming into this State shall not be considered to gain residence in this State by any period of time he resides in this State, and a person or patient released from a State hospital in North Carolina will retain his North Carolina residence during his acceptance in the other state under agreements authorized under this section. No members of the State Board of Mental Health or the Commissioner of Mental Health or any physician, psychiatrist, officer, agent, or employee of the State Department of Mental Health shall be held personally liable for any acts done or damages sustained by reason of any official acts done or committed under the authority of this section. (1947, c. 537, s. 20; 1955, c. 887, s. 13; 1959, c. 1002, s. 22; 1963, c. 1184, s. 1.)

§ 122-40. Transfer of mentally ill citizens of North Carolina from another state to North Carolina.—The State Department of Mental Health is authorized, upon being satisfied that a person hospitalized in a state hospital for the mentally ill in another state is a resident of this State, to authorize such person to be returned to the appropriate institution in this State at the expense of the sending state. The hospitalization of an alleged mentally ill person or an alleged inebriate in another state and the authorization by the State Department of Mental Health for his return shall be sufficient authority for the superintendent of the appropriate State hospital in this State to hold this patient for a reasonable period not to exceed thirty (30) days. During this time hospitalization procedures for temporary observation and treatment may be initiated as provided for in article 7 of this chapter, without the

removal of the patient from the hospital. (1945, c. 952, s. 34; 1947, c. 537, s. 19; 1959, c. 1002, ss. 20, 21; 1963, c. 1184, s. 1.)

§ 122-40.1. Proceedings in case of insanity of alien.—If any person, not a citizen of the United States, shall be ascertained to be insane, the clerk of the court shall immediately notify the Governor of this State of the name of the insane person, the country of which he is a citizen, and his place of residence in said country if the same can be ascertained, and such other facts in the case as he may obtain, together with a copy of the examination taken; and the Governor shall transmit such information and examination to the Secretary of State at Washington, D. C., with the request that he inform the minister resident or plenipotentiary of the country of which the insane person is supposed to be a citizen. (1899, c. 1, s. 16; Rev., s. 4585; C. S., s. 6211; 1963, c. 1184, s. 1.)

§ 122-41. Expenses to be paid by county of residence; penalty.—Immediately upon the hospitalization of any alleged mentally ill person or alleged inebriate under article 7 of this chapter, a transcript of the proceedings shall be sent to the county in which he has residence and that county shall pay over to the county from which he was hospitalized all the cost of the examination and hospitalization proceedings, and if the board of commissioners of the county of residence shall fail to pay all proper expense of said examination and proceedings within sixty (60) days after the claim shall have been presented, they shall forfeit and pay to the county which hospitalized the alleged mentally ill person or alleged inebriate the sum of two hundred and fifty dollars (\$250.00), to be recovered by the commissioners of that county in a civil action brought in the superior court of the county from which the patient was hospitalized, against the commissioners of the county of residence of the alleged mentally ill patient or inebriate. (1899, c. 1, s. 16; Rev., s. 4583; C. S., s. 6205; 1963, c. 1184, s. 1.)

§ 122-42. Cost of conveying patients to and from hospital; how paid.—The cost and expenses of conveying every patient to any hospital from any county, or of removing him from the hospital to the county from which he was hospitalized or to the county of his residence, as released, shall be paid by the treasurer of the county of residence, upon the order of its board of county commissioners. Whenever the board of commissioners shall be satisfied that such person has property sufficient to pay such cost and expenses, or that some other person liable for his support and maintenance has property sufficient to pay such costs and expenses as aforesaid, they may bring an action to recover the amount paid from the said person, or from the other person liable for his support and maintenance. (1899, c. 1, s. 32; Rev., s. 4555; C. S., s. 6202; 1945, c. 952, s. 30; 1963, c. 1184, s. 1.)

§ 122-43. Fees and mileage for examination; payment.—The fees listed below shall be allowed to the officers who make the examination and they shall be paid by the county in which the alleged mentally ill person or alleged inebriate has residence if the alleged mentally ill person or alleged inebriate, or one legally responsible for the support of such person, is unable to pay for the same.

To the clerk who makes the examination, ten dollars (\$10.00), and if the clerk goes to the place where the proposed patient is or resides, seven cents (7¢) a mile each way in addition. This shall cover his entire costs in taking the examination and making out the necessary papers. When the clerk is holding an examination of a patient who is a resident of a county other than the county in which the clerk holds office, the fees herein provided to be paid by the county of the patient's residence shall be paid to the clerk individually and shall be in addition to any regular compensation to which the clerk is entitled.

To the physicians making the examination, the sum of fifteen dollars (\$15.00) each and mileage at the rate of seven cents (7¢) per mile. If the county physician is a salaried officer, he is not to be allowed any fee for making this examination.

To the person serving process such fees as are now allowed by law for service

of process of similar character. (1899, c. 1, s. 15; Rev., ss. 4580, 4581; C. S., s. 6198; 1947, c. 537, s. 17; 1955, c. 887, s. 8; 1957, c. 1232, s. 19; 1961, c. 511, s. 7; 1963, c. 1184, s. 1.)

§ 122-44. Inquiry into estates; priority given to indigent patients; payment required from others.—After the clerk of the court has determined that the alleged mentally ill or alleged inebriate person is a fit subject for care and treatment in a State hospital the clerk shall go further and inquire whether the said person is indigent or not in such way that he has not sufficient estate or property to bear the expense of his care and treatment. If the said person is found to be indigent, the clerk shall determine whether or not the person legally responsible for his support has sufficient estate or property to bear the costs of care and treatment.

In the admission of patients to any State facility, priority of admission shall be given to indigent persons; but the State Department of Mental Health may regulate admissions, having in view the curability of patients, the welfare of the institutions, and the exigencies of particular cases. The Department may, if there be sufficient room, admit other than indigent patients, upon proper compensation, based on the ability of the patient or his estate or one legally responsible for his support to pay. Where the clerk of the court or the superintendent of the hospital has doubt as to the indigency of the patient, he shall refer the question to the county department of public welfare for investigation. Upon the death of any patient, the State facility may maintain an action against his estate for his support and maintenance. (1899, c. 1, s. 44; Rev., s. 4573; 1915, c. 254; 1917, c. 150, s. 1; C. S., s. 6186; 1945, c. 952, s. 15; 1957, c. 1232, s. 15; 1963, c. 1184, s. 1.)

Editor's Note.—The cases cited in the annotations to this section were decided under former statutory provisions but have been retained here where it was thought that the cases would be helpful in interpreting the present provisions. For comment on former provisions, see 19 N. C. Law Rev. 487.

Meaning of "Indigent Persons."—The term "indigent insane" [now "indigent persons"] includes all those who have no income over and above what is sufficient to support those who may be legally dependent on the estate. In re Hybart, 119 N. C. 359, 25 S. E. 963 (1896).

Financial Status at Time of Admission Need Not Be Determined.—It was not required that the directors of a hospital finally determine the status of a patient at the time of his admission, the financial status of the patient being subjected to the vicissitudes of fortune. State v. Security Nat. Bank, 207 N. C. 697, 178 S. E. 487 (1935).

Free Admission of Person Able to Pay Expenses.—An insane person able to pay expenses at the State Hospital was not entitled to free admission. Hospital v. Fountain, 128 N. C. 23, 38 S. E. 34 (1901).

§ 122-45. Persons entitled to immediate admission if space available; notice to clerk of admission.—Any resident of North Carolina who has been legally adjudged by a clerk of court or other authorized person in accordance with the provisions of this chapter to be a proper subject for care and treatment in a State hospital shall, if treatment facilities are available, be entitled to immediate admission. No resident of this State who has been legally adjudged to be a proper subject for care and treatment and who has been presented to the superintendent of the proper State hospital as provided in this chapter, shall be refused admission thereto if treatment facilities are available, but nothing in this article shall be construed to affect the acceptance, discharge and transfer of patients as now provided for by law.

Upon the admission of any person pursuant to order of a clerk of superior court, the superintendent of the institution shall notify such clerk of the admission. (1919, c. 326, ss. 1, 6; C. S., s. 6184; 1945, c. 952, s. 13; 1957, c. 1232, s. 14; 1959, c. 1002, s. 13; 1963, c. 451, s. 2; c. 1166, s. 2; c. 1184, s. 1.)

§ 122-46. Right of patient to communication and visitation; exercise of civil rights.—(a) Subject to reasonable rules and regulations of the hospital and except to the extent that the chief medical officer of the hospital determines that it is necessary for the medical welfare of the patient to impose restrictions, every patient shall be entitled (i) to communicate by sealed mail or otherwise with persons, including official agencies, inside and outside the hospital; (ii) to receive visitors;

and (iii) to exercise all civil rights, including the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, and vote, unless he has been adjudicated incompetent under the provisions of G. S. chapter 35 and has not been restored to legal capacity.

(b) Notwithstanding any limitations authorized under this section on the right of communication, every patient shall be entitled (i) to communicate by sealed mail with the State Department of Mental Health, and with the court, if any, which ordered his hospitalization; and (ii) to receive his or her attorney if accompanied by a medical member of the hospital staff.

(c) Any limitations imposed by the head of the hospital on the exercise of these rights by the patient and the reasons for such limitations shall be made a part of the clinical record of the patient. (1963, c. 1884, s. 1.)

§ 122-47. Use of restraining devices limited.—Mechanical restraints shall not be applied to a patient unless it is determined by the head of the hospital or his designee to be required by the medical needs of the patient. Every use of a mechanical restraint and the reasons therefor shall be made a part of the clinical record of the patient under the signature of the head of the hospital or his designee. (1963, c. 1184, s. 1.)

§ 122-48. Clerk to keep record of examinations and discharges.—The clerk shall keep a record of all examinations of persons alleged to be mentally ill or inebriate and he shall record in such record a brief summary of the proceedings and of his findings. He shall also keep a record of all conditional releases and discharges provided for in article 8 of this chapter. Provided, that when an alleged mentally ill person or an alleged inebriate who is a resident of this State is hospitalized from some county other than the county of his residence, the clerk of the superior court of the county of such person's residence shall maintain the records specified in this section upon receipt of a certified copy of such records from the clerk of the superior court of the county of hospitalization. (1899, c. 1, s. 17; Rev., s. 4586; C. S., s. 6197; 1945, c. 952, s. 26; 1955, c. 887, s. 7; 1961, c. 1186; 1963, c. 1184, s. 1.)

§ 122-49. Female patient to be accompanied by female attendant or member of the family.—Each female patient must be accompanied to the hospital by a member of her family; if a member of her family is not available, she must be accompanied by a female designated by the county director of public welfare of the county of the patient's residence or admission. The expenses of the female attendant are to be borne by the county commissioners of the county of the patient's residence. (1919, c. 326, s. 4; C. S., s. 6201; 1945, c. 952, s. 29; 1953, c. 256, s. 6; 1961, c. 186; 1963, c. 1184, s. 1.)

§ 122-50. Person conveying patient to hospital without authority.—No sheriff or other person shall convey a patient to any hospital without having ascertained that the patient will be admitted, and if any sheriff or other person shall carry a patient to a hospital without having ascertained that the patient will be admitted, and the patient is not admitted, he shall be required to convey the patient back to the county of his residence, and shall not be repaid by the county or hospital for expenses incurred in carrying the patient to and from the hospital. (1899, c. 1, s. 25; Rev., s. 4546; C. S., s. 6206; 1963, c. 1184, s. 1.)

§ 122-51. Civil liability for corruptly attempting hospitalization.—Nothing contained in this chapter shall be held or construed to relieve from liability in any suit or action instituted in the courts of this State, any husband, wife, guardian, or physician, who unlawfully, maliciously and corruptly attempts to hospitalize any person or patient to any hospital for the mentally ill or center for the mentally retarded under the provisions of this chapter. (1963, c. 1184, s. 1.)

§ 122-52. Disclosure of information, records, etc.—No superintendent, physician, psychiatrist or any other officer, agent or employee of any of the facilities

under the management, control, and supervision of the State Department of Mental Health shall be required to disclose any information, record, report, case history or memorandum which may have been acquired, made or compiled in attending or treating a patient of said facilities in a professional character, and which information, records, reports, case histories and memorandums were necessary in order to prescribe for or to treat said patient or to do any act for him in a professional capacity unless a court of competent jurisdiction shall issue an order compelling such disclosure: Provided that where a person or persons are defendants in criminal cases and a mental examination of such defendants has been ordered by the court, the State Department of Mental Health through its officers and agents may transmit the results or the report of such mental examination to the clerk of said court and to the solicitor or prosecuting officer and to the attorney or attorneys of record for the defendant or defendants. (1963, c. 1184, s. 1.)

§ 122-53. General Assembly visitors of hospitals.—The members of the General Assembly shall be ex officio visitors of all hospitals under the control of the State Department of Mental Health. (1963, c. 1184, s. 1.)

Cross Reference.—For earlier provisions similar to this section, see § 122-20.

§ 122-54. Assisting patient to escape; misdemeanor.—If any person shall assist any patient of any State hospital for the mentally ill, mentally retarded, or inebriate to leave said hospital without authority, he shall be guilty of a misdemeanor. (1963, c. 1184, s. 1.)

Cross Reference.—For earlier provisions similar to this section, see § 122-23.

§ 122-55. Hospitalization and incompetency proceedings to have no effect on one another.—Except for the provisions of G. S. 35-3, the hospitalization of an alleged mentally ill person or an alleged inebriate or an alleged mentally retarded person under the provisions of this chapter shall in no way affect incompetency proceedings as set forth in chapter 35 of the General Statutes of North Carolina, and incompetency proceedings as set forth in chapter 35 shall have no effect upon hospitalization proceedings as set forth in this chapter. (1963, c. 1184, s. 1.)

ARTICLE 4.

Voluntary Admission.

§ 122-56. Admission upon patient's application—Generally.—Any person believing himself to be mentally ill or threatened with mental illness, or an inebriate, may voluntarily admit himself to the proper hospital. The application for admission of such a person shall be signed at the hospital on a form approved by the State Department of Mental Health. The applicant must have a written statement in letter form from a qualified physician which states that in the opinion of the physician the applicant is a fit subject for admission into the hospital, and that he recommends his admission. No certificate of the clerk of the superior court is to accompany this application, and the superintendent of the State hospital shall not be required to notify the clerk of court of the discharge of the patient. The superintendent may, if he thinks it a proper application, receive the patient thus voluntarily admitted and treat him, but no report need be made to the clerk of court. The State Department of Mental Health shall have the same control over patients who admit themselves voluntarily as it has over those hospitalized under judicial proceedings except that a voluntary patient shall be entitled to be discharged after he shall have given the superintendent ten days' written notice of his desire to be discharged, unless proceedings have been initiated for the judicial hospitalization of such patient.

If in the opinion of the examining physician or of the superintendent of the hospital the patient should be admitted for not less than a thirty-day period to permit

more adequate examination and treatment, the superintendent may have the patient sign a special form agreeing to admit himself for thirty (30) days. When the patient shall have signed this form admitting himself for thirty (30) days, the superintendent may require that the patient remain at the hospital for this full period.

Judicial hospitalization of voluntarily admitted patients must proceed through the same channels as specified in article 7 of this chapter. (1899, c. 1, s. 49; Rev., s. 4593; 1917, c. 150, s. 1; C. S., s. 6209; 1945, c. 952, s. 32; 1953, c. 256, s. 8; 1955, c. 887, s. 10; 1957, c. 1232, s. 21; 1961, c. 511, s. 9; 1963, c. 1184, s. 2.)

Editor's Note.—The 1963 act inserting this article, effective July 1, 1963, redesignated former article 4 as article 8.

§ 122-57. Same—Psychiatric Training and Research Center at North Carolina Memorial Hospital.—Any person believing himself to be an inebriate or mentally ill or threatened with mental illness may voluntarily apply for admission to the Psychiatric Training and Research Center at the South Wing of the North Carolina Memorial Hospital in Chapel Hill in the same manner as he would apply for voluntary admission to a State hospital. Upon the approval of his application by the Director of the Inpatient Service, the applicant may be admitted. The patient's application shall be in the same form as those provided for in G. S. 122-56 and must be accompanied by the statement of a qualified physician that the applicant is a fit subject for admission. (1955, c. 1274, s. 2; 1963, c. 1184, s. 2.)

ARTICLE 5.

Admission by Medical Certification.

§ 122-58. Admission on certification of physicians.—(a) Whenever two qualified physicians shall certify, on forms to be provided by the State Department of Mental Health, that any person is mentally ill, or an inebriate, and is in need of care and treatment in a hospital for the mentally ill or inebriate, such person shall be admitted to the appropriate State hospital, or private hospital within the meaning of G. S. 122-72, on receipt of such certificate. The certificate of the physicians shall be notarized. No certificate of the clerk of superior court shall accompany this certification and no superintendent shall be required to supply the clerk of court with a certificate of discharge unless a hearing is held under subsection (b) of this section.

(b) If the patient or any member of his family objects to admission in the manner herein provided prior to admission, the procedure outlined in G. S. 122-63 must be followed before hospitalization. If, after admission, the patient or any member of his family shall object to the admission of the alleged mentally ill person or alleged inebriate in the manner herein provided, they may, within sixty (60) days after the admission of such patient, file with the clerk of the superior court of the county in which the hospital is located, an affidavit stating such objection. The clerk receiving such affidavit shall then proceed to hold the hearing required by G. S. 122-64. The expenses of such hearing shall be borne by the county of residence of the patient. (1961, c. 512, s. 1; 1963, s. 1184, s. 2.)

Editor's Note.—The 1963 act inserting this article, effective July 1, 1963, redesignated former article 5 as article 10.

ARTICLE 6.

Emergency Hospitalization.

§ 122-59. Temporary detention of persons becoming suddenly violent and dangerous to themselves or others; physician's statement; application for order of detention; subsequent proceedings.—Any person, who, by reason of the commission of overt acts, is believed to be suddenly violently [violent] and danger-

ous to himself or others, may be detained, physically and forcibly, for a period not to exceed twenty (20) days in the State hospital to which the clerk is authorized to hospitalize alleged mentally ill persons or alleged inebriates from his county, in a private hospital, county hospital or other suitable place of a nonpenal character.

Authorization for such detention may be given by any qualified physician in the form of a written statement that he has examined such person within 24 hours of the date of his statement and that it is his professional opinion, based upon such examination, that the person is homicidal or suicidal, or dangerous to himself or others. The physician's statement shall be sworn to before a person authorized to take acknowledgments or witnessed by a peace officer, and shall constitute authority, without any court action, for the sheriff or any other peace officer to take custody of the alleged homicidal or suicidal person and transport him immediately to the appropriate State hospital or other suitable place of detention. It shall be the duty of the peace officer to whom such authorization is presented to effect such custody and transportation.

If such person has not been examined by a physician and it is believed that it would be dangerous to attempt to have him examined without restraint, authorization for detention may be given by the clerk of the superior court in the form of a written order directed to the sheriff or any other peace officer. The clerk may issue such order upon the application of any person having knowledge of the facts. The application must be in writing, signed and sworn to before the clerk, and must state that affiant believes the person to be homicidal or suicidal, the particulars as to his behavior, history and circumstances supporting such belief, that affiant is of the opinion that it would be dangerous to attempt to have the person examined by a physician without restraint, and it must include a request for the issuance of an order for detention and show the address of the affiant and his relationship, if any, to the alleged homicidal or suicidal person. In his order, the clerk may direct the officer to detain such person for an examination by a physician or to transport him immediately to the appropriate State hospital, as the facts and circumstances may warrant.

No person for whom detention has been authorized by a physician or a clerk of the superior court may be taken into custody after the expiration of 24 hours from the date of the examination by the physician or the issuance of the order by the clerk.

The detention provided for herein shall be for observation and treatment a period of not more than twenty (20) days. If involuntary hospitalization for mental illness is deemed necessary, a proceeding for judicial hospitalization may be instituted under the provision of article 7 of this chapter during the twenty-day period of detention. (1899, c. 1, s. 16; Rev., s. 4582; C. S., s. 6204; 1945, c. 952, s. 31; 1957, c. 1232, s. 20; 1959, c. 1002, ss. 18, 19; 1961, c. 511, s. 8; 1963, c. 1184, s. 2.)

Editor's Note.—The 1963 act inserting this article became effective July 1, 1963.

ARTICLE 7.

Judicial Hospitalization.

§ 122-60. Affidavit of mental illness or inebriety and request for examination.—When it appears that a person is suffering from some mental illness or inebriety and is in need of observation or admission in a State hospital for the mentally ill or inebriate, some reliable person having knowledge of the facts shall make before the clerk of the superior court of the county in which the alleged mentally ill person or alleged inebriate is or resides, and file in writing, on a form approved by the State Department of Mental Health, an affidavit that the alleged mentally ill person or alleged inebriate is in need of observation or admission in a hospital for the mentally ill or inebriate, together with a request that an examination of the proposed patient be made.

This affidavit may be sworn to before the clerk of the superior court, or the

deputy clerk of the court. (1899, c. 1, s. 15; Rev., s. 4575; C. S., s. 6190; 1945, c. 952, s. 19; 1947, c. 537, s. 13; 1963, c. 1184, s. 2.)

Cross Reference.—See note to § 122-62.

Editor's Note.—The 1963 act inserting this article, effective July 1, 1963, redesignated former article 7 as article 12.

For comment on involuntary commitment procedures, see 41 N. C. Law Rev. 141.

§ 122-61. Detention of persons alleged to be mentally ill or inebriate and dangerous to themselves or others.—If the affidavit filed in accordance with the provisions of G. S. 122-60 states that the alleged mentally ill person or alleged inebriate is likely to endanger himself or others, he may be taken into custody and detained in his own home, in a private or general hospital, or in any other suitable facility as approved by the local health director for such detention, upon an order of the clerk of the court. He shall not, except because of and during an extreme emergency, be detained in a nonmedical facility used for the detention of individuals charged with or convicted of penal offenses, and then only upon an order of the clerk of the court, and with notification as soon as practicable to the local health director.

The clerk shall expedite the hearing, and, if the alleged mentally ill person or alleged inebriate is found to be in need of hospitalization, the clerk shall expedite the transmission of this information to the proper State hospital so that the alleged mentally ill person or alleged inebriate can be admitted without any undue delay. (1941, c. 179; 1955, c. 887, s. 5; 1963, c. 1184, s. 2.)

Editor's Note.—For comment on former § 122-44, corresponding to this section, see 19 N. C. Law Rev. 487.

§ 122-62. Clerk to issue an order for examination.—When an affidavit and request for examination of an alleged mentally ill person or alleged inebriate has been made, or when the clerk of the superior court has other valid knowledge of the facts of the case to cause an examination to be made, he shall direct two qualified physicians who are not directly involved with the care and treatment of the patient in the hospital to which the person may be hospitalized, to examine the alleged mentally ill person or alleged inebriate. The clerk is authorized to order the alleged mentally ill person or inebriate to submit to such examination, and it shall be the duty of the sheriff or other law enforcement officer to see that this order is enforced. The purpose of the examination is to determine whether or not the alleged mentally ill or inebriate person is a proper subject for observation and treatment. If the said physicians are satisfied that the alleged mentally ill or inebriate person should be hospitalized they shall sign an affidavit to that effect on a form approved by the State Department of Mental Health.

This affidavit may be sworn to before the clerk of the superior court, an assistant clerk of the superior court, a deputy clerk of the court, or a notary public. (1899, c. 1, s. 15; Rev., s. 4576; C. S., s. 6191; 1945, c. 952, s. 20; 1947, c. 537, s. 14; 1961, c. 511, s. 2; 1963, c. 1184, s. 2.)

Editor's Note.—The cases cited in the annotations to this section were decided under former statutory provisions but have been retained here where it was thought that the cases would be helpful in interpreting the present provisions.

For note as to liability for signing certificate of insanity without proper examination of alleged lunatic, see 36 N. C. Law Rev. 552.

Applicant May Act as Intermediary in Obtaining Affidavit of Physician.—Since the affidavits may be made before notaries, rather than before the clerk, it follows by necessary implication that the affiant in

the affidavit-application may act as intermediary in carrying the papers to and from the physician for execution of the physician's affidavit. *Jarman v. Offutt*, 239 N. C. 468, 80 S. E. (2d) 248 (1954).

Judicial Authority Conferred upon Clerk.

—Jurisdiction to direct two physicians to examine an alleged mentally disordered person to determine if a state of mental disorder exists, and, when the two physicians shall have certified that the alleged mentally disordered person is in need of observation and admission in a hospital for the mentally disordered, to have a hearing and examine the certificates or affidavits of the physi-

cians and any proper witnesses, and, where warranted, to commit the alleged mentally disordered person to a State hospital for the mentally disordered is the judicial authority conferred upon the clerk of the superior court. *Bailey v. McGill*, 247 N. C. 286, 100 S. E. (2d) 860 (1957).

Clerk Is Judge and Physicians Are Witnesses.—While the examination and affidavits by two physicians to commit an alleged mentally disordered person to a State hospital for the mentally disordered for examination and observation are required, the act of commitment and detention of such person in such a hospital, if any be made, is performed by the clerk of the superior court. The two physicians, therefore, are witnesses in the proceeding and the clerk of the superior court is the judge. *Bailey v. McGill*, 247 N. C. 286, 100 S. E. (2d) 860 (1957).

Statement of Physician Is Absolutely Privileged.—In a lunacy proceeding instituted by proper affidavit sworn to before the clerk, a statement of a physician sworn to before a notary public is absolutely privileged and will not support an action for libel. *Jarman v. Offutt*, 239 N. C. 468, 80 S. E. (2d) 248 (1954).

A proceeding to commit an alleged mentally disordered person to a State hospital for the mentally disordered under the procedure set forth in former § 122-43, corresponding to this section, and former § 122-46 (see now § 122-63) was a judicial proceeding within the rule of absolute privilege. Therefore the affidavits of physicians required by former §§ 122-43 and

122-46, being pertinent to a judicial proceeding and thus privileged, although defamatory were not actionable. *Bailey v. McGill*, 247 N. C. 286, 100 S. E. (2d) 860 (1957).

Allegations Insufficient to Show Malicious Prosecution, False Imprisonment or Abuse of Process.—Allegations that physicians, in making affidavits pursuant to former § 122-43, corresponding to this section, were guilty of gross negligence amounting to legal malice, without allegations that they were motivated by an ulterior or wrongful purpose or conspired with another in this ulterior and wrongful purpose, failed to state cause of action for malicious prosecution, or for false imprisonment, or for abuse of process. *Bailey v. McGill*, 247 N. C. 286, 100 S. E. (2d) 860 (1957).

Allegations Sufficient to Make Out Case of Abuse of Process.—Where plaintiff's allegations tended to show that defendant physician influenced plaintiff's parents to (see now § 122-60) execute the affidavits required by former § 122-42 and subsequently influenced two other physicians to execute the affidavits required by former § 122-43, corresponding to this section, in order to have plaintiff committed, solely through ill will and a desire to rid himself of plaintiff as a patient, etc., contrary to the purpose authorized by former §§ 122-43 and 122-46 (see now § 122-63), and plaintiff was committed, a cause of action for abuse of process was alleged. *Bailey v. McGill*, 247 N. C. 286, 100 S. E. (2d) 860 (1957).

§ 122-63. Clerk may commit for observation and treatment period.—When two qualified physicians have certified that the alleged mentally ill person or alleged inebriate is in need of observation and admission to the proper State hospital, the clerk shall hold an informal hearing. The clerk shall cause to be served on the alleged mentally ill person or alleged inebriate notice of the hearing. Such notice may be served by an officer of the law or some other person designated by the clerk of court. If the clerk designates a member of a hospital staff, a member of the staff of the county department of public welfare, or a member of the staff of the county or district health department to serve the notice, no charge is to be made for such service. The clerk shall have the hearing without unnecessary delay and shall examine the certificates or affidavits of the physicians and any proper witnesses. At the conclusion of the hearing the clerk may dismiss the proceedings if he finds that the alleged mentally ill or inebriate person is not in need of observation and treatment in an appropriate hospital. If he finds that the alleged mentally ill or inebriate person is in need of observation and treatment, he is to issue an order for hospitalization on a form approved by the State Department of Mental Health. This order shall authorize the appropriate hospital to receive said person and there to examine him and observe his condition and give appropriate treatment for a period not exceeding one hundred and eighty (180) days. The clerk may authorize the transfer of such alleged mentally ill person or alleged inebriate to the proper hospital, when notified by the superintendent of the hospital that treatment facilities are available. If such person is not admitted to the appropriate State hospital within thirty (30) days of the date on which the clerk issued the order of hospitalization, the order shall be void and of no effect whatsoever.

The clerk shall transmit to the hospital information relevant to the physical and mental condition of the alleged mentally ill person or alleged inebriate. He shall

certify as to the indigency of the person and any persons liable for the care of the person under G. S. 122-44 or G. S. 143-117 et seq., on forms approved by the State Department of Mental Health.

When a person has been admitted to one of the State hospitals under the provisions of this chapter for a period of observation and treatment, and when he has been carefully examined, if he is found to be not mentally ill or an inebriate, or not in need of care in a State hospital, the superintendent shall immediately report these findings to the clerk of the superior court of the county in which such person has residence, who shall order his discharge. The removal of said person from the State hospital shall be after the notice and in the manner prescribed in G. S. 122-67. (1899, c. 1, s. 15; Rev., s. 4578; 1915, c. 204, s. 1; C. S., s. 6193; 1923, c. 144, s. 1; 1945, c. 952, s. 22; 1947, c. 537, s. 15; 1953, c. 133; 1955, c. 887, ss. 4, 6; 1957, c. 1232, s. 17; c. 1257; 1959, c. 1002, s. 15; 1961, c. 511, ss. 3, 4; 1963, c. 1184, s. 2.)

Cross Reference.—See notes to §§ 122-62 and 122-65.

Editor's Note.—The cases cited in the annotations to this section were decided under former statutory provisions but have been retained here where it was thought that the cases would be helpful in interpreting the present provisions.

Necessity for Trial.—An order for the commitment of a person to an insane hospital is essentially a judgment by which he is deprived of his liberty, and it is a cardinal principle of English jurisprudence that before any judgment can be pronounced against a person there must have been a trial of the issue upon which the judgment is given. In re Wilson, 257 N. C. 593, 126 S. E. (2d) 489 (1962), commented

on in 41 N. C. Law Rev. 279.

Detention of an alleged insane person for a short period of time pending observation is permitted. In re Wilson, 257 N. C. 593, 126 S. E. (2d) 489 (1962), commented on in 41 N. C. Law Rev. 279.

Jury Trial.—As to right to trial by jury under former §§ 122-46 and 122-46.1, corresponding to this section and § 122-65, see In re Cook, 218 N. C. 384, 11 S. E. (2d) 142 (1940); In re Wilson, 257 N. C. 593, 126 S. E. (2d) 489 (1962), commented on in 41 N. C. Law Rev. 279.

Appeal.—There was no provision for an appeal from the order of the clerk to the superior court under former statute corresponding to this article. In re Cook, 218 N. C. 384, 11 S. E. (2d) 142 (1940).

§ 122-64. Place for hearings; judicial hospitalization of persons already in hospitals.—All hearings to determine whether or not an alleged inebriate or alleged mentally ill person should be judicially hospitalized are to be held in the county of residence of the alleged inebriate or alleged mentally ill person. However, in those instances where the alleged inebriate or alleged mentally ill person is already in a public or private mental institution or public general hospital, without prior judicial hospitalization, the clerk of the superior court of the county in which the patient is hospitalized shall, upon request of the controlling officer of said hospital, go to such hospital and hold the hearing required by G. S. 122-63. If the clerk holding such hearing finds that the alleged mentally ill or inebriate person is in need of observation and treatment as provided for in G. S. 122-63, or is in need of hospitalization for a minimum necessary period as provided for in G. S. 122-65, the clerk may enter an order requiring hospitalization for such observation and treatment or for such minimum necessary period. The expense of such hearing shall be borne by the county of residence of such alleged mentally ill person or alleged inebriate. The records of such hospitalization shall be maintained in accordance with the provisions of G. S. 122-48.

There is to be paid to the physicians making the examination a fee to be determined in accordance with the schedule of fees adopted by the State Department of Mental Health and mileage at the rate of seven cents (7¢) per mile. If the county physician is a salaried officer, he is not to be allowed any fee for making this examination. The fee of the clerk of superior court for holding the hearing shall be as provided in G. S. 122-43. (1957, c. 1232, s. 16; 1963, c. 1184, s. 2.)

§ 122-65. Clerk may order discharge of person hospitalized for observation and treatment or hospitalize for minimum necessary period; second hearing.—When a person is judicially hospitalized for observation and treatment, the hospital superintendent shall, at the expiration of one hundred and eighty (180) days, file

with the clerk of the superior court of the county in which the hospital is located, a written report stating the conclusion reached by the hospital superintendent as to whether or not further treatment is needed. Upon the basis of this report the clerk shall discharge the patient or order a second hearing to decide whether or not the alleged mentally ill person or alleged inebriate should be further hospitalized for a minimum necessary period. If the recommendation of the hospital superintendent is that the patient should be hospitalized for a minimum necessary period the clerk shall set a date for the hearing and cause notice to be served on the alleged mentally ill person or alleged inebriate by a person designated by the clerk who may or may not be an officer of the law. The alleged mentally ill or inebriate person may, if he so desires, waive the hearing by signing a statement to that effect and returning it to the clerk of court. If the hearing is not waived, the clerk of the county in which the patient is hospitalized shall have the hearing without unnecessary delay, at which time the clerk is to receive evidence concerning the condition of the alleged mentally ill or inebriate person including any evidence the alleged mentally ill or inebriate person wishes to offer. At the conclusion of the hearing the clerk may discharge the patient or issue an order for hospitalization for a minimum necessary period on a form approved by the State Department of Mental Health. (1945, c. 952, s. 23; 1957, c. 1232, s. 18; 1961, c. 511, s. 5; 1963, c. 1184, s. 2.)

Cross Reference.—See note to § 122-63.

Editor's Note.—The cases cited in the annotations to this section were decided under former statutory provisions but have been retained here where it was thought that the cases would be helpful in interpreting the present provisions.

Necessity for Trial.—An order for the commitment of a person to an insane hospital is essentially a judgment by which he is deprived of his liberty, and it is a cardinal principle of English jurisprudence that before any judgment can be pronounced against a person there must have been a trial of the issue upon which the judgment is given. In *re Wilson*, 257 N. C. 593, 126 S. E. (2d) 489 (1962), commented on in 41 N. C. Law Rev. 279.

Final Order of Commitment without Notice and Opportunity to Be Heard Invalid.—By reason of lack of notice to an alleged mentally disordered person and an opportunity for her to be heard on the question of her sanity, a final order of commitment for an indefinite period under which she was restrained violated her constitutional rights. In *re Wilson*, 257 N. C.

593, 126 S. E. (2d) 489 (1962), commented on in 41 N. C. Law Rev. 279.

Method of Securing Release.—Prior to 1957, it was held that a person committed to a State mental institution under former article 3 of this chapter could not invoke the provisions of § 35-4 for a determination of the restoration of sanity by a jury trial as a condition precedent to his release under former § 122-46.1, corresponding to this section, the proper remedy being by habeas corpus under § 17-32. In *re Harris*, 241 N. C. 179, 84 S. E. (2d) 808 (1954).

In 1957, former § 122-46, corresponding to § 122-63, was amended so as to provide expressly that if a guardian had been appointed under §§ 35-2 or 35-3, the procedure for restoration of sanity should be as provided by §§ 35-4 and 35-4.1. It was held that this provision removed from former § 122-46 the objection that a traditional jury trial was not provided as a means of determining the issue of sanity. In *re Wilson*, 257 N. C. 593, 126 S. E. (2d) 489 (1962), commented on in 41 N. C. Law Rev. 279.

§ 122-65.1. Mentally ill person or inebriate temporarily hospitalized.—When any person is found to be mentally ill or inebriate under the provisions of this chapter or is on conditional release from a State hospital and he cannot be immediately admitted to the proper hospital, and such person is also found to be subject to such acts of violence as threaten injury to himself and danger to the community, and he cannot be otherwise properly restrained, he may be temporarily hospitalized and treated in a private hospital, county hospital, or other suitable place until a more suitable provision can be made for his care. (1963, c. 1184, s. 2.)

§ 122-65.2. Authorization for admission of patients to Psychiatric Training and Research Center at North Carolina Memorial Hospital.—The Psychiatric Training and Research Center at the South Wing of the North Carolina Memorial Hospital at Chapel Hill shall be authorized to receive alleged mentally ill persons hospitalized for observation and treatment, in the same manner as a State hospital. The clerk of the court shall not, however, hospitalize to this Center without the

approval of the Director of the Inpatient Service. (1955, c. 1274, s. 2; 1961, c. 511, s. 6; 1963, c. 1184, s. 2.)

§ 122-65.3. Clerk may hospitalize for observation at Center; certifying physicians.—When the clerk of court has approval as provided in G. S. 122-65.2 he may hospitalize alleged mentally ill persons to the Psychiatric Training and Research Center at the South Wing of the North Carolina Memorial Hospital in the manner provided by G. S. 122-63. Any two qualified physicians not directly connected with the Inpatient Service of the Center may serve as certifying physicians. (1955, c. 1274, s. 2; 1963, c. 1184, s. 2.)

§ 122-65.4. Clerk may hospitalize for minimum necessary period to Center.—When the alleged mentally ill person hospitalized at the Psychiatric Training and Research Center at the South Wing of North Carolina Memorial Hospital has been observed for a period of one hundred and eighty (180) days the Director of the Inpatient Service shall report concerning the patient's condition in the same manner as the superintendent of the State hospital as provided in G. S. 122-65. The clerk shall act on this report in the same manner as is provided in G. S. 122-65. (1955, c. 1274, s. 2; 1959, c. 1002, s. 17; 1963, c. 1184, s. 2.)

§ 122-65.5. Withdrawal of petition.—The petitioner in proceedings to determine whether or not a person is a fit subject for care and treatment in a State hospital may, at any time before the proposed patient has been admitted to the particular State hospital, withdraw such petition by filing with the clerk of the superior court, in writing a motion to this effect. The clerk with the written consent of the examining physicians is authorized to allow such motion. When such motion is allowed, the proceedings shall be deemed at an end. (1945, c. 952, s. 25; 1947, c. 537, s. 16; 1963, c. 1184, s. 2.)

Editor's Note.—The 1963 act inserting this article, effective July 1, 1963, designated this section as § 122-66.

ARTICLE 8.

Discharge of Patients.

§ 122-66: Repealed by Session Laws 1961, c. 511, s. 10.

Editor's Note.—Session Laws 1963, c. 1184, s. 3, effective July 1, 1963, redesignated former article 4 as this article.

§ 122-66.1. Discharge of patients; filing thereof.—(a) The superintendent of any State hospital may discharge a patient in the following manner and with the following effect:

- (1) The superintendent shall prepare a certificate of discharge and in said certificate find that the patient is not incompetent or that such patient has been restored to competency in all respects or that such patient is not mentally ill or inebriate and no longer in need of care and treatment in a State hospital for the mentally ill or inebriate.
- (2) The certificate of discharge shall be sent by the superintendent to the clerk of the superior court of the county from which the patient was committed.
- (3) The certificate of discharge shall be filed and a notation made in the lunacy docket by the clerk of the superior court and such certificate shall operate to remove all disabilities arising from the commitment.

(b) The discharge of patients provided for in this section shall not conflict with the procedure provided in G. S. 122-67. (1957, c. 1232, s. 22; 1963, c. 1184, s. 4.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, substituted "mentally ill or inebriate and no longer in need of care and treatment in a State hospital for

the mentally ill or inebriate" for "of unsound mind" at the end of subdivision (1).

For note on guardianship and restoration to sanity, see 41 N. C. Law Rev. 279,

§ 122-67. Release of patients from hospital; responsibility of county.—When it shall appear that any mentally ill person under commitment to and confined in a hospital for the mentally ill but not charged with a crime or under sentence shall have shown improvement in his mental condition as to be able to care for himself, or when he shall have become no longer dangerous to the community and to himself, or when it shall appear that suitable provision can be made for the alleged mentally disordered person so that he will not be injurious or dangerous to himself or the community, the superintendent of the hospital may in his discretion release him on probation to the care of his guardian, relative, friends or of any responsible person or agency in the community, and may receive him back into the hospital without further order of commitment during the continuance of the order of hospitalization which shall not have been terminated by the action of the superintendent in releasing him on probation. The superintendent of the hospital may require of the person assuming responsibility for the mentally disordered patient released on probation reports relative to the patient's condition and evidence and assurance of responsibility.

The superintendent may terminate the release of such mentally ill patient and order his return to the hospital, and the person responsible for the mentally ill patient's care may notify the superintendent of the hospital or the clerk of the superior court of the county in which the mentally ill patient has residence or is now located, and the clerk of the superior court so notified may order the mentally ill patient held pending his return to the hospital. The superintendent shall from time to time notify the clerk of the superior court of the county of the patient's residence of the release or probation of a patient for more than thirty days.

When the patient is indigent, the county may be required to pay for the transportation of the patient to the county of his residence.

It shall be the duty of the sheriff of the county to which a patient has been released, or in which he is found at the termination of his release on probation by the superintendent or by the clerk of the superior court, to return him to the hospital to which he is under hospitalization; cost of such return shall be a charge on the county in which the mentally ill patient is resident.

When a person under hospitalization has been released on probation to his own care or to his own family, and when he is no longer under the continued care and supervision of the hospital, as in a boarding home, and when he shall have been able to remain continuously out of the hospital without returning for the period of one year, he shall be regarded as recovered from his mental illness and no longer in need of care in a mental hospital, and shall be discharged from the order of hospitalization at the next succeeding discharge date of the hospital as provided by rules of the North Carolina State Department of Mental Health.

When a patient has been found to be without mental illness, or to have recovered from mental illness, or to be in such condition that he may safely be released, the superintendent shall notify the natural or legal guardian or nearest of kin and at the same time the superintendent shall send duplicate of such notice to the director of public welfare of a patient's home county. If the person notified should fail to come for the patient or to remove him from the hospital within a reasonable time, the superintendent shall notify the clerk of superior court of the county in which the patient has or had residence, who shall issue an order to the sheriff of such county directing the sheriff to call for and reconvey him to the county of his residence. The sheriff shall first take this patient to his or her family, or guardian, and if they cannot, or will not, provide a place for such patient in the home the sheriff shall then place this person under the charge of the director of public welfare in the patient's home county. (1899, c. 1, s. 22; Rev., s. 4596; 1917, c. 150, s. 1; C. S., s. 6214; 1945, c. 952, s. 36; 1947, c. 537, s. 21; 1953, c. 256, s. 9; 1955, c. 887, s. 4 (a); 1961, c. 186; c. 511, s. 11; 1963, c. 1166, s. 10; c. 1184, s. 5.)

Cross Reference.—As to liability for torts committed by discharged inmate, see annotation under § 122-24.

Editor's Note.—The 1945 amendment substituted the words "mentally disordered" for the word "insane" and made other changes.

The 1947 amendment rewrote this section. It would seem that the legislature inadvertently used the word "or" in the next to last line of the second paragraph when "on" was intended.

The 1953 amendment added the last paragraph, and the 1955 amendment rewrote the second sentence of such paragraph.

The first 1961 amendment substituted "director" for "superintendent" in two places in the last paragraph. The second 1961 amendment deleted the words "arrest and" formerly appearing between the words "his" and "return" near the beginning of the second paragraph.

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "Hospitals Board of Control." Session Laws 1963, c. 1184, s. 5, effective July 1, 1963, substituted "mentally ill" for "mentally disordered," "mental illness" for "mental disorder" and "hospitalization" for "commitment" throughout this section, except in a very few instances. It also substituted "residence" for "settlement" at the end of the third paragraph.

Discharge as Evidence of Sanity in Will Case.—There is no presumption of mental incapacity by reason of commitment in an asylum when it has been shown that the testator had been discharged as restored or cured by a certificate issued in accordance with the provisions of this section. In re Crabtree, 200 N. C. 4, 156 S. E. 98 (1930).

Cited in In re Tate, 239 N. C. 94, 79 S. E. (2d) 259 (1953); Mabry v. Mabry, 243 N. C. 126, 90 S. E. (2d) 221 (1955).

§ 122-67.1. Release of patients from the Psychiatric Training and Research Center at North Carolina Memorial Hospital in Chapel Hill.—The Director of the Inpatient Service may release patients on probation in the same manner as provided for the superintendent of a State hospital in § 122-67. He may also discharge such patients as in his opinion are no longer in need of hospital care. (1955, c. 1274, s. 3.)

§ 122-68. Superintendent may release patient temporarily.—Each superintendent may, for the space of thirty days, release upon probation any patient, when in his opinion the same would not prove injurious to the patient or dangerous to the community. (1899, c. 1, s. 23; Rev., s. 4597; C. S., s. 6215; 1945, c. 952, s. 37; 1957, c. 1232, s. 23.)

Editor's Note.—The 1945 amendment struck out, following "days" the words "or until the next meeting of the board of three directors provided for in the preceding section." The amendment also struck out the

former second sentence relating to reporting probations.

The 1957 amendment substituted "release" for "discharge."

§ 122-68.1. Superintendent must notify Commissioner of Mental Health and North Carolina State Department of Mental Health of unusually dangerous mentally disordered patients.—Whenever a person is found by the State hospital psychiatrists to be unusually dangerous to himself or others, the superintendent must notify the Commissioner of Mental Health and the North Carolina State Department of Mental Health. Such a patient cannot be paroled without the agreement of the North Carolina State Department of Mental Health and the Commissioner of Mental Health. If the Commissioner of Mental Health finds that any patient in one of the State hospitals is unusually dangerous to himself or to others, he may place the patient under the rules of this section. (1945, c. 952, s. 39; 1957, c. 1232, s. 24; 1959, c. 1002, s. 23; 1963, c. 1166, s. 10.)

Editor's Note.—The 1957 amendment substituted "General Superintendent" for "Commissioner of Mental Health."

The 1959 amendment substituted "Commissioner of Mental Health" for "General Superintendent" and "North Carolina Hospitals Board of Control" for "State Hospi-

tals Board of Control" throughout the section.

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "Hospitals Board of Control."

ARTICLE 9.

Centers for Mentally Retarded.

§ 122-69. State Department of Mental Health to have jurisdiction over centers for mentally retarded.—Caswell, O’Berry, Murdoch, and Western Carolina Centers for the retarded, and such other residential centers for the care and treatment of the mentally retarded as may be established by the State shall be under the jurisdiction of the State Department of Mental Health. The Department of Mental Health shall have the general superintendence, management, and control of the centers; of the grounds and buildings, officers, and employees thereof; of the patients therein and all matters relating to the government, discipline, contracts, and fiscal concerns thereof; and the State Board of Mental Health may make such rules and regulations as may seem to them necessary for carrying out the purposes of the centers. And the Department shall have the right to keep and control the patients of the centers until such time as the Department may deem proper for their discharge under such proper and humane rules and regulations as the Board may adopt. (1963, c. 1184, s. 6.)

Editor’s Note.—The 1963 act inserting Former §§ 122-69 to 122-71 were repealed by Session Laws 1945, c. 952, s. 38.

§ 122-69.1. Objects and aims of centers for mentally retarded.—The residential centers shall have the following general aims and objects:

- (1) Provide facilities and programs for those who cannot be contained in the community because of medical or psychosocial reasons;
- (2) Provide conditions which allow those admitted full development—emotionally, physically, and intellectually;
- (3) Provide medical care, educational opportunities, training in social and occupational skills, and opportunities for freedom and happiness to minimize the effects of the mental handicap;
- (4) Maintain facilities for evaluation and diagnosis, for cooperating with other agencies in instructing the public in the care of the mentally handicapped at home, and for aftercare of discharged residents from the centers;
- (5) Develop a therapeutic residential program that will be coordinated with an over-all State program;
- (6) Disseminate knowledge concerning the causation, prevention, nature and treatment of the mentally handicapped;
- (7) Engage in training and research in the field of the mentally handicapped;
- (8) Cooperate with all agencies—federal, State or local in the further attainment of these objects. (1963, c. 1184, s. 6.)

§ 122-70. Admissions to centers for mentally retarded.—Application for the admission of a child under 21 years of age must be made by the father if the mother and father are living together, and if not, by the one having custody, or by a duly appointed guardian. Otherwise, the State Department of Mental Health is authorized and empowered to promulgate rules, regulations and conditions of admission of children and adults to the centers. (1963, c. 1184, s. 6.)

§ 122-71. Financial responsibility of parents, guardians or patients.—In cases in which the parents or guardian of a child being admitted to a center are financially able, or in which an adult being admitted is financially able, the Department shall require such parents or guardian or adult to transport the child or adult to the appropriate center and make such contribution toward his maintenance as may seem just and proper to the Department. (1963, c. 1184, s. 6.)

§ 122-71.1. Discharge of patients.—Any person admitted to a center may be discharged therefrom or returned to his or her parents or guardian when requested by the parents or guardian or when, in the judgment of the State Department of

Mental Health, it will not be beneficial to such person or to the best interest of the center that such person be retained longer therein. (1963, c. 1184, s. 6.)

§ 122-71.2. Offenses relating to patients.—For the protection of the persons residing in the centers, it shall be unlawful for any person not a patient of a center for the mentally retarded:

- (1) To advise, or solicit, or to offer to advise or solicit, any patient of said centers to leave without authority;
- (2) To transport, or to offer to transport, in an automobile or other conveyances any patient of said centers to or from any place: Provided, this shall not apply to the superintendents or to any other person acting under the superintendent;
- (3) To engage in, or to offer to engage in any act which would constitute a sex offense with any patient of said centers;
- (4) To receive, or to offer to receive, any child patient of said centers into any place, structure, building or conveyance for the purpose of engaging in any act which would constitute a sex offense or to solicit any patients of said centers to engage in any act which would constitute a sex offense;
- (5) To conceal a person who has left a center without authority.

Any person who shall knowingly and willfully violate subdivisions (1) and (2) of this section shall be guilty of a misdemeanor, and shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the court; any person who shall knowingly and willfully violate subdivisions (3), (4) and (5) of this section shall be guilty of a felony, and shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the court. (1963, c. 1184, s. 6.)

§ 122-71.3. Articles 3 through 8 inapplicable to centers.—The provisions of articles 3, 4, 5, 6, 7 and 8 of this chapter shall not apply to the centers for the mentally retarded except as specifically stated therein. (1963, c. 1184, s. 6.)

ARTICLE 10.

Private Hospitals for the Mentally Disordered.

§ 122-72. Licensing and control of private mental institutions and homes.—

(a) It shall be unlawful for any person or corporation to establish or maintain a private hospital, home or school for the cure, treatment or rehabilitation of mentally ill persons, mentally retarded, or inebriates without first having obtained a license therefor from the Department of Mental Health. Any person who carries on, conducts or attempts to carry on or conduct a private hospital, home, or school for the cure, treatment or rehabilitation of mentally ill persons, mentally retarded, or inebriates without first having obtained a license therefor from the Department of Mental Health shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars (\$1,000.00), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment. The managing and executive officers of any corporation violating the provisions of this section shall be liable under the provisions of this section in the same manner and to the same extent as a private individual violating the law.

(b) Every application for license hereunder shall be accompanied by a plan of the premises proposed to be occupied describing the capacities of the buildings for the uses intended, the extent and location of the grounds and the number of patients proposed to be received therein with such other information and in such form as the Department may require. The Board of Mental Health may by rules or regulations prescribe minimum standards of safety, sanitation, medical, nursing, and other facilities and equipment for each type of establishment which must be met by the applicant before a license will be granted by the Department.

(c) Hospitals, homes or schools licensed under this article by the Department of Mental Health shall at all times be subject to the visitation of the said Department.

ment or any representative thereof, and each such hospital, home or school shall make to the Department a semiannual report on the first days of January and July of each year. The report shall state the number and residence of all patients admitted, the number discharged during the six (6) months preceding, and the officers of the hospital, home, or school. Each such hospital, home or school shall file with the Department a copy of its bylaws, rules, and regulations. The statistical records of each such hospital, home, or school shall at all times be open to the inspection of the Department of Mental Health. The State Department of Mental Health is authorized to license all private hospitals, homes, and schools established hereafter in this State for the cure, treatment and rehabilitation of the mentally ill, mentally retarded, and inebriate, and the Board of Mental Health may prescribe such minimum standards as they may deem necessary, and shall exercise the power of visitation, and for that purpose may depute any member of the Department to visit any private hospital, home, or school established under this article.

(d) The State Department of Mental Health may bring an action in the Superior Court of Wake County to vacate and annul any license granted by the Department, and such license shall be vacated and annulled upon a showing by the Department that the managers of any private hospital, home, or school shall have been guilty of immorality, cruelty, gross neglect, or wilful violation of the rules and regulations of the Board of Mental Health.

(e) The authority to license and inspect privately-operated homes or other nonmedical institutions (including religious facilities) for mentally ill persons, mentally retarded, and inebriates shall be the responsibility of the State Board of Public Welfare, and in such cases the supervision, reports and visitation provided for in this section with respect to the State Department of Mental Health shall apply with respect to the State Board of Public Welfare and such nonmedical institutions. (1899, c. 1, s. 60; Rev., s. 4600; C. S., s. 6219; 1945, c. 952, s. 41; 1957, c. 100, ss. 1, 4; 1963, c. 1166, s. 7.)

Cross Reference.—As to authority of State Board of Health to regulate sanitation at private hospitals, etc., see § 130-170.

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane" and "mental defectives" for "idiots."

Prior to Session Laws 1945, c. 952, s. 40, the title of this article was "Private Hospitals for the Insane."

The 1957 amendment substituted "Public Welfare" for "Charities" in the catchline and the last sentence. It also substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare" in the first and fifth sentences.

The 1963 amendment rewrote this section.

Session Laws 1963, c. 1184, s. 9, effective July 1, 1963, redesignated former article 5 as this article.

Demurrer.—Where an action was brought by the State Board of Public Welfare under this section prior to amendment to vacate and annul a license it had issued for the maintenance and operation of a private

hospital for the insane, on the ground of immorality and cruelty of its principal owner or manager, in which the manager is joined, a demurrer of the individual was properly sustained. *Board of Public Welfare v. Hospital*, 196 N. C. 752, 147 S. E. 288 (1929).

Evidence.—Where there was allegation and evidence, in an action to annul and revoke the license of a private hospital for the insane, issued prior to the amendments to this section, that immorality had been practiced among its employees by the manager and principal owner, and also cruel treatment had been used towards the patients by him, with separate issues as to each class of offense submitted to the jury, and the jury rendered a partial verdict by leaving unanswered the issue as to gross immorality, the action of the court in directing a mistrial and refusing to sign judgment for defendant was not erroneous. *Board of Public Welfare v. Hospital*, 196 N. C. 752, 147 S. E. 288 (1929).

§ 122-72.1. Psychiatric services in general hospitals.—The term "private hospital" as used in this article shall include psychiatric services in general hospitals licensed by the Medical Care Commission, except that the provisions of G. S. 122-72 relating to licensing and reporting shall not apply to the psychiatric services in general hospitals; provided, however, that no mentally disordered or inebriate person is to be committed to a general hospital licensed by the Medical Care Commission unless such hospital has adequate facilities and qualified personnel for the

proper observation, care and treatment of such person and the hospital director agrees to accept such person. (1963, c. 813, s. 1.)

§ 122-73. Counties and towns may establish hospitals.—Any county, city, or town may establish a hospital for the maintenance, care, and treatment of such mentally ill persons as cannot be admitted into a State hospital, and of mentally retarded persons upon like conditions and requirements as are above prescribed for the institution of private hospitals; and the State Department of Mental Health is given the same authority over such hospitals as is given them by the preceding section [§ 122-72] for private hospitals. (1899, c. 1, s. 61; Rev., s. 4601; C. S., s. 6220; 1945, c. 952, s. 42; 1957, c. 100, s. 1; 1963, c. 1166, s. 8; c. 1184, s. 14.)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane" and "mental defectives" for "idiots."

The 1957 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare."

The first 1963 amendment substituted

"State Department of Mental Health" for "State Board of Public Welfare."

The second 1963 amendment, effective July 1, 1963, substituted "mentally ill" for "mentally disordered" and "mentally retarded" for "mental defectives and feeble-minded."

§ 122-74. Private hospitals part of public charities.—All hospitals, homes, or schools for the care and treatment of mentally ill and mentally retarded persons and inebriates, formed in compliance with the two preceding sections [§§ 122-72, 122-73] and duly licensed by the Department of Mental Health or Board of Public Welfare as in this article provided, shall, during the continuance of such license, become and be a part of the system of public charities of the State of North Carolina. (1903, c. 329, s. 1; Rev., s. 4602; C. S., s. 6221; 1957, c. 100, s. 1; 1963, c. 1166, s. 9; c. 1184, s. 15.)

Editor's Note.—The 1957 amendment substituted "Welfare" for "Charities."

The first 1963 amendment inserted the words "Department of Mental Health or."

The second 1963 amendment, effective July 1, 1963, substituted "mentally ill and mentally retarded" for "insane persons, idiots, and feeble-minded."

§ 122-75. Placing mentally ill persons in private hospitals.—Whenever any person shall be found to be mentally ill in the mode hereinbefore prescribed, and such person shall be possessed of an income sufficient to support those who may be legally dependent for support on the estate of such mentally ill person, and, moreover, to support and maintain such mentally ill person in any named hospital without the state, or any private hospital within the State, and such mentally ill person, if of capable mind to signify such preference, shall, in writing, declare his wish to be placed in such hospital instead of being in a State hospital (or in case such mentally ill person is incapable of declaring such preference, then the same may be declared by his guardian), and two respectable physicians who shall have examined such mentally ill person, shall deem it proper, then it may be lawful for the clerk, together with said physicians, to recommend in writing that such mentally ill person shall be placed in the hospital so chosen, as a patient thereof. (1899, c. 1, s. 39; Rev., s. 4603; C. S., s. 6222; 1945, c. 952, s. 43; 1963, c. 1184, s. 16.)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane." It also struck out the words "with the clerk of the court or justice of the peace who made the examination" formerly appearing after the word "person" the second time it appears from the end of the

section. The amendment further struck out "or justice" formerly appearing after "clerk" near the end of the section.

The 1963 amendment, effective July 1, 1963, substituted the word "ill" for the word "disordered" each time that the latter appeared in this section.

§ 122-76: Repealed by Session Laws 1945, c. 952, s. 44.

§ 122-77. Clerk to report proceedings to judge.—The clerk of the court shall lay the proceedings before the judge of the superior court of the district in which such mentally ill person may reside or be domiciled, and if he approves them, he shall so declare in writing, and such proceedings, with the approval thereof, shall

be recorded by the clerk. (1899, c. 1, s. 42; Rev., s. 4605; C. S., s. 6224; 1945, c. 952, s. 45; 1963, c. 1184, s. 17.)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane." The 1963 amendment, effective July 1, 1963, substituted "ill" for "disordered."

§ 122-78. Certified copy and approval of judge sufficient authority.—A certified copy of such proceedings, with the approval of a judge, shall be sufficient warrant to authorize any friend of such mentally ill person appointed by the judge to remove him to the hospital designated. (1899, c. 1, s. 43; Rev., s. 4606; C. S., s. 6225; 1945, c. 952, s. 46; 1963, c. 1184, s. 18.)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane." The 1963 amendment, effective July 1, 1963, substituted "ill" for "disordered."

§ 122-79. Examination, hospitalization and treatment in private hospital.—When it is deemed advisable that any person, a citizen of North Carolina, or a citizen of another state or country, temporarily sojourning in North Carolina, should be detained in the private hospital to which the person is to be hospitalized within the State, two persons, one of whom must be a physician and who shall not be connected with the treatment of the alleged mentally ill person or inebriate, shall make affidavit before a clerk of the superior court of this State or a notary public that they have carefully examined the alleged mentally ill person; that they believe him to be a fit subject for hospitalization to a hospital for the mentally ill, and that his detention and treatment will be for his benefit. This certificate shall be filed with and approved by the clerk of the superior court in the county in which the examination is held, or in the county in which the private hospital is located, and a certified copy of this certificate and approval of the clerk shall be deposited with the superintendent of the private hospital as his authority for holding and treating the mentally ill person. The clerk may, as he sees fit, order any mentally ill person to be taken to a private hospital within the State instead of to one of the State hospitals and this order shall be sufficient authority for holding and treating such mentally ill person in such private hospital. Mentally retarded persons, and inebriates may be hospitalized to and held and treated in private hospitals or homes in this State in the manner hereinbefore prescribed for mentally ill persons. (1903, c. 329, s. 2; Rev., s. 4607; C. S., s. 6226; 1945, c. 952, s. 47; 1949, c. 1060; 1963, c. 813, s. 2; c. 1184, s. 19.)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane" and "mental defectives" for "idiots." It also rewrote the third sentence and made other changes.

Prior to the 1949 amendment the physician mentioned in the first sentence could not be connected with any private hospital, and the affidavit was to be made only before the clerk of the superior court. The amendment substituted in the third sentence "this order" for "his warrant."

The first 1963 amendment substituted near the middle of the first sentence the words "the treatment of the alleged men-

tally disordered person or inebriate" for the words "this private hospital."

Prior to the second 1963 amendment, effective July 1, 1963, this section provided for commitment of mentally disordered persons instead of hospitalization of mentally ill persons. The amendment also substituted "Mentally retarded" for "Mental defectives, feeble-minded" at the beginning of the last sentence, deleted the proviso at the end of the section and inserted the provisions as to treating persons held in the second, third and last sentences.

Applied in *In re Dunn*, 239 N. C. 378, 79 S. E. (2d) 921 (1954).

§ 122-80. Patients transferred from State hospital to private hospital.—When it is deemed desirable that any patient of any State hospital be transferred to any licensed private hospital within the State, the State Department of Mental Health may so order. A certified copy of the hospitalization order on file at the State hospital shall be sent to the private hospital which, together with the order of the State Department of Mental Health, shall be sufficient warrant for holding the mentally ill or mentally retarded person, or inebriate by the officers of the private hospital. A certified copy of the order of transfer shall be filed with the

clerk of superior court of the county from which such mentally ill or mentally retarded person, or inebriate was hospitalized. After such transfer the State hospital from which such patient was transferred shall be relieved of all future responsibility for the care and treatment of such patient. (1903, c. 329, s. 3; Rev., s. 4608; C. S., s. 6227; 1945, c. 952, s. 50; 1957, c. 1232, s. 25; 1963, c. 1184, s. 20.)

Editor's Note.—The 1945 amendment substituted "patient" for "inmate," "mentally disordered" for "insane" and "mental defective" for "idiot."

The 1957 amendment rewrote this section.

The 1963 amendment, effective July 1, 1963, substituted "State Department of Mental Health" for "executive committee"

in the first and second sentences, substituted "hospitalization order" for "commitment" in the second sentence, substituted "ill or mentally retarded person" for "disordered person, mental defective" in the second and third sentences, and "hospitalized" for "committed" at the end of the third sentence.

§ 122-81. Guardian of mentally ill or retarded persons to pay expenses out of estate.—It shall be the duty of any person having legal custody of the estate of a mentally ill or mentally retarded person, or inebriate legally held in a private hospital to supply funds for his support in the hospital during his stay therein and so long as there may be sufficient funds for that purpose over and beyond maintaining and supporting those persons who may be legally dependent on the estate. (1899, c. 1, s. 40; 1903, c. 329, s. 4; Rev., s. 4610; C. S., s. 6228; 1945, c. 952, s. 51; 1963, c. 1184, s. 21.)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane" and "mental defective" for "idiot."

The 1963 amendment, effective July 1,

1963, substituted "ill or mentally retarded person" for "disordered person, mentally defective."

§ 122-81.1. Voluntary admission to private hospital.—Any person believing himself to be mentally ill or inebriate, or threatened with mental illness, may voluntarily admit himself to a private hospital as defined in G. S. 122-72 in accordance with the procedure specified in article 4 of this chapter; provided the private hospital is willing to accept such person for care and treatment. (1945, c. 952, s. 47½; 1963, c. 1184, s. 22.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, rewrote this section.

§ 122-82. Fees and charges for examinations.—The fees and charges for examination for admission to private hospitals shall be the same as for examinations for admission to the State hospitals. (1903, c. 329, s. 5; Rev., s. 4611; C. S., s. 6229.)

§ 122-82.1. Superintendent must notify clerk of court when patient is paroled or discharged.—Whenever a patient who has been hospitalized in a private hospital is paroled or discharged the hospitalizing clerk of court must be notified by the superintendent of the private hospital as provided for in the statutes relating to the State hospitals. (1945, c. 952, s. 48; 1963, c. 1184, s. 23.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, substituted "hospi-

talized in" for "committed to" and "hospitalizing" for "committing."

§ 122-82.2. Superintendent must notify of patient leaving without authority.—Whenever a patient who has been hospitalized in a private hospital leaves such hospital without authorization, the clerk of court who ordered such hospitalization, the examining physicians, and the sheriff of the county of residence of the patient must be notified by the superintendent of the private hospital. (1945, c. 952, s. 49; 1963, c. 1184, s. 24.)

Editor's Note.—Prior to the 1963 amendment, effective July 1, 1963 this sec-

tion related to giving notice of the escape of a patient committed to a private hospital.

ARTICLE 11.

Mentally Ill Criminals.

§ 122-83. Mentally ill persons charged with crime to be committed to hospital.—All persons who may hereafter commit crime while mentally ill, and all persons who, being charged with crime, are adjudged to be mentally ill at the time of their arraignment, and for that reason cannot be put on trial for the crimes alleged against them, shall be sent by the court before whom they are or may be arraigned for trial, when it shall be ascertained by due course of law that such person is mentally ill and cannot plead, to Dorothea Dix Hospital, if the alleged criminal is white, or to Cherry Hospital if the alleged criminal is colored, and if the alleged criminal is an Indian from Robeson County, to Dorothea Dix Hospital, as provided for mentally ill Indians from Robeson County, and they shall be confined therein under the rules and regulations prescribed by the board of directors under the authority of this article, and they shall be treated, cared for, and maintained in said hospital. As a means of such care and treatment, the said board of directors may make rules and regulations under which the persons so committed to said institutions may be employed in labor upon the farms of said institutions under such supervision as said board of directors may direct: Provided, that the superintendent and medical director of the hospital shall determine, in each case, that such employment is advantageous in the physical or mental treatment of the particular inmate to be so employed. Their confinement in said hospital shall not be regarded as punishment for any offense. (1899, c. 1, s. 63; Rev., s. 4617; C. S., s. 6236; 1923, c. 165, ss. 2, 3; 1927, c. 228; 1945, c. 952, s. 53; 1959, c. 1028, ss. 1, 2; 1963, c. 1184, s. 25.)

Cross Reference.—As to bringing mental illness to attention of court and determination of present mental capacity, see note to § 122-84.

Editor's Note.—The 1945 amendment substituted in the first sentence "mentally disordered" for "insane."

Prior to Session Laws 1945, c. 952, s. 52, the title of this article was "Dangerous Insane."

The 1959 amendment changed the names of the State Hospital at Raleigh and the State Hospital at Goldsboro to Dorothea Dix Hospital and Cherry Hospital, respectively.

Section 11 of Session Laws 1963, c. 1166, provides that "State Department of Mental Health" is substituted for "board of directors" in any sections of the General

Statutes wherein "board of directors" is used to refer to the Hospitals Board of Control.

Session Laws 1963, c. 1184, s. 10, effective July 1, 1963, redesignated former article 6 as this article and changed the title thereof from "Mentally Disordered Criminals" to "Mentally Ill Criminals."

Session Laws 1963, c. 1184, s. 25, effective July 1, 1963, substituted "ill" for "disordered" four times in the first sentence.

This article deals exclusively with mentally ill criminals. It does not include a proceeding under § 35-4 to determine restoration to sanity. In re Tate, 239 N. C. 94, 79 S. E. (2d) 259 (1953).

Cited in State v. Duncan, 244 N. C. 374, 93 S. E. (2d) 421 (1956).

§ 122-84. Persons acquitted of certain crimes or incapable of being tried, on account of mental illness, committed to hospital; return for trial; detention for treatment.—When a person accused of the crime of murder, attempt at murder, rape, assault with the intent to commit rape, highway robbery, train wrecking, arson, or other crime, shall have escaped indictment or shall have been acquitted upon trial upon the ground of mental illness, or shall be found by the court to be without sufficient mental capacity to undertake his defense or to receive sentence after conviction, the court before which such proceedings are had shall detain such person in custody until an inquisition shall be had in regard to his mental condition. The judge shall, at the term of court at which such person is acquitted, cause notice to be given in writing to such person and his attorney, and, if in his good judgment it be necessary, to his nearest relative, naming the day upon which he shall proceed to make an inquisition in regard to the mental condition of such person. The judge shall cause such witness to be summoned and examined as he may deem proper or as the person so acquitted or his counsel may desire. At such inquisition the judge shall cause the testimony to be taken in writing and be preserved, and a copy of

which shall be sent to the superintendent of the hospital designated in § 122-83. If upon such inquisition the judge shall find that the mental condition or disease of such person is such as to render him dangerous either to himself or other persons, and that his confinement for care, treatment, and security demands it, he shall commit such person to the hospital designated in § 122-83, to be kept in custody therein for treatment and care as herein provided. Such person shall be kept therein, unless transferred under the previous provisions of this chapter, until restored to his right mind, in which event it shall be the duty of the authorities having the care of such person to notify the sheriff of the county from which he came, who shall order that he appear before the judge of the superior court of the district, to be dealt with according to law. The expense incident to such commitment and removal shall be paid by the county authorities from which such patient was sent.

When a person committed to a State hospital under this section as unable to plead shall have been reported by the hospital to the court having jurisdiction as being mentally able to stand trial and plead, the said patient shall be returned to the court to stand trial as provided in § 122-87. If the hospital authorities feel that an outright discharge or release of said person (in the event he is found not guilty), would be harmful or dangerous to himself or the public at large involved, and that further care and treatment is necessary, said authorities will when reporting that he is able to stand trial and plead, make a request for his return for further care and treatment, in the event he is found not guilty.

If at the trial it is determined that the defendant is not guilty of a criminal offense and it appears to the trial judge that the State hospital in its report has requested that the defendant be returned to said hospital for further care and treatment as an outright discharge or release of said defendant would be harmful or dangerous to himself or the public at large, the trial judge shall commit said defendant to the proper State hospital for care and treatment and shall require him to remain at said hospital until discharged by the superintendent thereof upon the advice of the medical staff. (1899, c. 1, s. 65; Rev., s. 4618; C. S., s. 6237; 1923, c. 165, s. 4; 1945, c. 952, s. 54; 1951, c. 989, s. 1; 1963, c. 1184, s. 26.)

Editor's Note.—The 1923 amendment changed this section by making a reference to the hospitals designated in the preceding section. The 1945 amendment substituted "mental disorder" for "insanity" and the 1951 amendment added the last two paragraphs.

The 1963 amendment, effective July 1, 1963, substituted "illness" for "disorder" in the catchline and in the first sentence.

Constitutionality—Strict Construction.—This section is within the legislature's constitutional authority, but, being a restraint upon the liberty of the prisoner within the constitutional guarantee for his protection, should be strictly construed in his favor. *State v. Craig*, 176 N. C. 740, 97 S. E. 400 (1918).

Section Penal in Character.—This section is penal in its character. *State v. Craig*, 176 N. C. 740, 97 S. E. 400 (1918).

High Degree of Crime Contemplated by Section.—This section specifies a high degree of crime, such as murder, rape, and the like, indicating a class of criminals who may be dangerous to the public or individuals, if left at large, and by the addition of the words "or other crimes" did not include the offense of resisting arrest, especially if the resistance was only by words in the nature of a threat that the officer could not take him alive. *State v. Craig*, 176 N. C. 740, 97 S. E. 400 (1918).

How Question of Present Insanity Brought to Attention of Court.—The General Assembly has prescribed no procedure by which the question of the present insanity or mental disorder of the person accused of crime may be brought to the attention of the court or for the investigation by the court preliminary to adjudicating the question whether accused is so mentally disordered as to be incapable of making a rational defense. Hence, in the absence of an applicable statute, the investigation of the present insanity or mental disorder to determine whether the accused shall be put on trial, and the form of the investigation ordered, are controlled by the common law. *State v. Sullivan*, 229 N. C. 251, 49 S. E. (2d) 458 (1948).

How Mental Capacity of Accused Determined.—The manner and form of an inquiry to determine whether a person accused of crime has the mental capacity to plead to the indictment and prepare a rational defense is for the determination of the trial court in the exercise of its discretion, and the court may submit an issue as to the present mental capacity of defendant and the issue of his guilt or innocence of the offense charged at the same time. *State v. Sullivan*, 229 N. C. 251, 49 S. E. (2d) 458 (1948), discussed in 27 N. C. Law Rev. 258.

Accused to Be Committed and Dis-

charged Only by Judge of Superior Court.—The legislature intended that the criminal insane and those who may plead insanity or want of understanding to plead to a bill of indictment shall be committed to and discharged from a mental institution of the State only by a judge of the superior court. In re Tate, 239 N. C. 94, 79 S. E. (2d) 259 (1953).

Commitment of Accused Does Not End Jurisdiction of Court in Which Indictment Is Pending.—The commitment to a State hospital of a person who pleads want of mental capacity to answer to an indictment does not end the jurisdiction of the superior court in which the indictment is pending. The petitioner remains in the technical custody of that court and upon his recovery must be returned to it for trial. He may, however, be heard under a writ of habeas corpus under § 122-86. In re Tate, 239 N. C. 94, 79 S. E. (2d) 259 (1953). See also § 122-87.

Release on Habeas Corpus.—A person illegally detained in a hospital for the dangerous insane cannot be released on habeas corpus if he is insane at the time of the

return of the writ. In re Boyett, 136 N. C. 415, 48 S. E. 789 (1904).

Court May Order Prisoner Returned for Examination.—See State v. Pritchett, 106 N. C. 667, 11 S. E. 357 (1890).

Finding by the court implies a discretion on the part of the trial judge. State v. Godwin, 216 N. C. 49, 3 S. E. (2d) 347 (1939).

Adjudication of Insanity as Evidence.—An adjudication, pursuant to this section, that defendant was without sufficient mental capacity to undertake his defense, entered about a month after the time of the commission of the offense, is competent in evidence for the consideration of the jury on defendant's defense of insanity. State v. Duncan, 244 N. C. 374, 93 S. E. (2d) 421 (1956).

Knowledge of Section by Jury in Murder Prosecution.—A defendant, whose defense is the lack of capacity to commit murder in the first degree, is not entitled to have the jury know the provisions of this section and § 122-86. State v. Bracy, 215 N. C. 248, 1 S. E. (2d) 891 (1939).

§ 122-85. Convicts becoming mentally ill committed to hospital.—All convicts becoming mentally ill after commitment to any penal institution in this State shall be admitted to the hospital designated in § 122-83. The same hospitalization procedure as prescribed in article 7 of this chapter shall be followed except that temporary authority for admission of the convict may be given by the clerk of court of the county in which the prison is located, that the prisoner need not be removed from the prison for a hearing, and that the clerk of court of the county from which the convict was sentenced shall issue the order of hospitalization.

In case of the expiration of the sentence of any convicted mentally ill person, while such person is confined in said hospital, such person shall be kept in said hospital until transferred or discharged, as provided by §§ 122-66.1, 122-67 and 122-68. (1899, c. 1, s. 66; Rev., s. 4619; C. S., s. 6238; 1923, c. 165, s. 5; 1945, c. 952, s. 55; 1955, c. 887, s. 14; 1957, c. 1232, s. 26; 1963, c. 1184, s. 27.)

Editor's Note.—The 1923 amendment inserted the reference to the hospitals designated in § 122-83. And the 1945 amendment substituted "mentally disordered" for "insane."

The 1955 amendment rewrote this section.

The 1957 amendment inserted in the second paragraph the words "transferred

or" and the number 122-66.1.

The 1963 amendment, effective July 1, 1963, substituted "ill" for "disordered" in the first and third sentences, substituted "hospitalization" for "commitment" twice in the second sentence, and substituted "article 7" for "article 3" near the beginning of the second sentence.

§ 122-85.1. Persons on parole.—Any person who has been released from any penal institution on parole who becomes mentally ill or inebriate shall be hospitalized, in the manner provided in article 7 of this chapter, in the appropriate State hospital. (1959, c. 1002, s. 24; 1963, c. 1184, s. 28.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, rewrote this section.

§ 122-86. Persons acquitted of crime on account of mental illness; how discharged from hospital.—No person acquitted of a capital felony on the ground of mental illness, and committed to the hospital designated in § 122-83 shall be discharged therefrom unless an act authorizing his discharge be passed by the General Assembly. No person acquitted of a crime of a less degree than a capital felony and committed to the hospital designated in § 122-83 shall be discharged therefrom except upon an order from the Governor. No person convicted of a

crime, and upon whom judgment was suspended by the judge on account of mental illness, shall be discharged from said hospital except upon the order of the judge of the district or of the judge holding the courts of the district in which he was tried: Provided, that nothing in this section shall be construed to prevent such person so confined in the hospitals designated in § 122-83 from applying to any judge having jurisdiction for a writ of habeas corpus. No judge issuing a writ of habeas corpus upon the application of such person shall order his discharge until the superintendents of the several State hospitals shall certify that they have examined such person and find him to be sane, and that his detention is no longer necessary for his own safety or the safety of the public. (1899, c. 1, s. 67; Rev., s. 4620; C. S., s. 6239; 1923, c. 165, s. 6; 1945, c. 952, s. 56; 1963, c. 1184, s. 29.)

Editor's Note.—The 1945 amendment substituted "mental disorder" for "insanity." the catchline and in the first and third sentences.

The 1963 amendment, effective July 1, 1963, substituted "illness" for "disorder" in Cited in *State v. Bracy*, 215 N. C. 248, 1 S. E. (2d) 891 (1939); *In re Tate*, 239 N. C. 94, 79 S. E. (2d) 259 (1953).

§ 122-87. Proceedings in case of recovery of patient charged with crime.—

Whenever a person confined in any hospital for the mentally ill, and against whom an indictment for crime is pending, has recovered or has been restored to normal health and sanity, the superintendent of such hospital shall notify the clerk of the court of the county from which said person was sent, and the clerk will place the case against said person upon the docket of the superior or criminal court of his county for trial, and the person shall not be discharged without an order from said court. In all cases where such person confined in said hospital shall have recovered his mind, the clerk of the court of the county from which he was hospitalized shall fix the amount of bail required for his appearance at the next term of the superior or criminal court of the county for trial, except in cases where the offense charged is a capital felony, and in this case only the judge of the superior court residing within or holding the courts of said district shall have the power to fix bail. If the person confined in the hospital, and reported sane as aforesaid, shall give the bond fixed by the clerk or judge as above provided for, he shall be discharged by the superintendent, and if he does not give the bond, he shall be transferred to the jail of the county from which he was hospitalized. The superintendent will notify the sheriff of said county, and the sheriff will remove the person to the jail of his county. The sheriff will pay the expenses of such removal, and the county of the person's residence will repay the sheriff for his expenses and services. (1899, c. 1, s. 64; Rev., s. 4621; C. S., s. 6240; 1923, c. 165, s. 7; 1945, c. 952, s. 57; 1963, c. 1184, s. 30.)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane" in the first sentence. ized" for "committed" in the second and third sentences, and substituted "residence" for "settlement" in the last sentence.

The 1963 amendment, effective July 1, 1963, substituted "ill" for "disordered" in the first sentence, substituted "hospital- Cited in *State v. Duncan*, 244 N. C. 374, 93 S. E. (2d) 421 (1956).

§ 122-87.1. Proceedings in case criminal charges are terminated.—Whenever an indictment for crime which has been pending against a person who is confined in a State hospital has been quashed, nolle prossed, or otherwise terminated except by trial, the patient shall thereafter be treated in all respects as if he had been hospitalized under the provisions of article 7 of this chapter. (1959, c. 1002, s. 25; 1963, c. 1184, s. 31.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, substituted "hospitalized" for "committed" and "article 7" for "article 3" near the end of this section.

§ 122-88. Ex-convicts with homicidal tendency committed to hospital.—

Whenever any person who has been confined in the State prison under sentence for the felonious killing of another person, and who has been discharged therefrom at the expiration of his term of sentence, or as the result of executive clemency, shall thereafter so act as to justify the belief that he is possessed of a homicidal tendency, and

shall be duly adjudged mentally ill, in accordance with the provisions of article 7 of this chapter, the clerk of the superior court or other officer having jurisdiction of the proceedings in which such person shall be adjudged mentally ill may, in his discretion, hospitalize such person to the State hospital designated in § 122-83, as authorized and provided in this chapter. (1911, c. 169, s. 1; C. S., s. 6241; 1923, c. 165, s. 8; 1945, c. 952, s. 58; 1963, c. 1184, s. 32.)

Editor's Note.—The 1945 amendment substituted "tendency" for "mania" and "mentally disordered" for "insane."

The 1963 amendment, effective July 1,

1963, substituted "ill" for "disordered" twice and also substituted "hospitalize" for "commit" near the end of the section.

§ 122-89. Hospital authorities to receive and treat such patients.—It shall be the duty of the duly constituted authorities of the State hospitals designated in this article for the mentally ill to receive all such mentally ill persons as shall be committed to said institutions in accordance with the provisions of this article, and to treat and care properly for the same until discharged in accordance with the provisions of the law. (1911, c. 169, s. 2; C. S., s. 6242; 1923, c. 165, s. 9; 1945, c. 952, s. 59; 1963, c. 1184, s. 33.)

Editor's Note.—The 1945 amendment substituted "mentally disordered" for "insane."

The 1963 amendment, effective July 1, 1963, substituted "ill" for "disordered."

§ 122-90. Inferior courts without jurisdiction to commit.—No court inferior to the superior court of this State shall have authority to send or commit any insane person to any State hospital for the criminal insane, as provided in this article. (1939, c. 66.)

Cited in *In re Tate*, 239 N. C. 94, 79 S. E. (2d) 259 (1953).

§ 122-91. Alleged criminal may be committed for observation and treatment; procedure; hospitalization or trial.—Any alleged criminal indicted or charged with the commission of a felony may, on the order of the presiding or resident judge of the superior court, in or out of term, be committed to a State hospital for a period of not exceeding sixty days for observation and treatment. The order of commitment shall contain the name and address of the nearest responsible relative, if known, and shall also contain the address of the alleged criminal, if known. If at the end of the observation and treatment period herein provided the alleged criminal is found to be mentally incompetent of pleading to the charge against him, the superintendent of the State hospital concerned shall report his findings and recommendations to the clerk of the superior court of the county from which the alleged criminal was committed. It shall be the duty of such clerk to bring the report to the attention of the presiding or residing judge of the superior court. It shall also be the duty of the clerk to notify the clerks of the superior court of the county in which the alleged criminal is hospitalized, and the duty of the clerk so notified to initiate proceedings to have the alleged criminal hospitalized for a minimum necessary period under the procedures prescribed in G. S. 122-65. If the alleged criminal shall be found competent, the superintendent of the State hospital concerned shall report his findings to the clerk of the superior court of the county from which such alleged criminal was committed and the clerk shall notify the sheriff who shall remove the alleged criminal from the State hospital and return him to the county for trial. (1945, c. 952, s. 60; 1951, c. 181; 1957, c. 1232, s. 27; 1961, c. 511, s. 12; 1963, c. 1184, s. 39.)

Editor's Note.—The 1951 amendment inserted "or resident" and "in or out of term" in the first sentence.

The 1957 amendment rewrote this section.

The 1961 amendment inserted "and treatment" at the end of the first sentence and near the beginning of the third sentence.

The 1963 amendment, effective July 1, 1963, deleted "who may, on the basis of

the report of the superintendent, commit such alleged criminal in accordance with the provisions of G. S. 122-83" at the end of the fourth sentence and inserted the present fifth sentence.

Applied in *State v. Johnson*, 256 N. C. 449, 124 S. E. (2d) 126 (1962); *State v. Arnold*, 258 N. C. 563, 129 S. E. (2d) 229 (1963).

ARTICLE 12.

John Umstead Hospital.

§ 122-92. Acquisition of Camp Butner Hospital authorized.—The State Department of Mental Health is authorized to acquire by purchase, gift or otherwise the Camp Butner Hospital, including buildings, equipment, and land necessary for the operation of a modern up-to-date hospital for the care and treatment of the mentally sick of this State. (1947, c. 789, s. 2; 1963, c. 1166, s. 10.)

Editor's Note.—For another act authorizing the acquisition of Camp Butner and the establishment of an institution similar to the other State hospitals, etc., see Session Laws 1947, c. 537, s. 1 set out in note to § 122-1. As to appropriation, etc., for acquisition and development of Camp Butner Hospital, see Session Laws 1947, c. 789, ss. 1, 3 and 4.

Session Laws 1955, c. 887, s. 1, designated the Camp Butner Hospital as the

State Hospital at Butner. Session Laws 1959, c. 1028, s. 4, changed the name of the State Hospital at Butner to the John Umstead Hospital. See § 122-7 and note.

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "Hospitals Board of Control." Session Laws 1963, c. 1184, s. 11, effective July 1, 1963, redesignated former article 7 as this article.

§ 122-93. Disposition of surplus real property.—The North Carolina State Department of Mental Health is authorized and empowered to sell, lease, rent or otherwise dispose of surplus real property located at John Umstead Hospital, and to use the funds acquired as a result of such disposition, under such rules and regulations as may be adopted jointly by the North Carolina State Department of Mental Health and the Advisory Budget Commission: Provided, however, that all conveyances of real property shall otherwise comply with the procedures outlined in chapter 146 of the General Statutes of North Carolina and other applicable laws. (1949, c. 71, s. 1; 1955, c. 887, s. 1; 1959, c. 799, ss. 1, 2; c. 1028, s. 4; 1963, c. 1166, s. 10.)

Editor's Note.—Session Laws 1955, c. 887, s. 1, designated the Camp Butner Hospital as the State Hospital at Butner. See § 122-7 and note.

The first 1959 amendment inserted near the middle of the section "and to use the funds acquired as a result of such disposition." The amendment also rewrote the

proviso.

The second 1959 amendment changed the name of the State Hospital at Butner to the John Umstead Hospital.

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "Hospitals Board of Control."

§ 122-94. Application of State highway and motor vehicle laws to roads, etc., at John Umstead Hospital; penalty for violations.—All the provisions of chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are hereby made applicable to the streets, alleys and driveways on the grounds of John Umstead Hospital. Any person violating any of the provisions of said chapter in or on such streets, alleys or driveways shall, upon conviction thereof, be punished as therein prescribed. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, alleys and driveways on said grounds as is now vested by law in the State Department of Mental Health. (1949, c. 71, s. 2; 1955, c. 887, s. 1; 1959, c. 1028, s. 4; 1963, c. 1166, s. 10.)

Editor's Note.—Session Laws 1955, c. 887, s. 1, designated the Camp Butner Hospital as the State Hospital at Butner. See § 122-7 and note.

Session Laws 1959, c. 1028, s. 4, changed the name of the State Hospital at Butner

to the John Umstead Hospital.

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "Hospitals Board of Control."

§ 122-95. Ordinances and regulations for enforcement of article.—The North Carolina State Department of Mental Health is authorized to make such rules and regulations and to adopt such ordinances, as it may deem necessary, to enforce the provisions of this article and to carry out its true purpose and intent, for the better administration of the John Umstead Hospital and any adjacent territory owned by

it, and in particular may make ordinances and adopt rules and regulations dealing with and controlling the following subjects:

- (1) To regulate the use of streets, alleys, driveways, and to establish parking areas.
- (2) To promote the health, safety, morals and general welfare of those residing on, occupying, renting or using any property or facilities within its limits, and those visiting and patronizing the hospital by:
 - a. Regulating the height, number of stories and size of buildings or other structures, the percentage of lot to be occupied, the size of yards and courts and other open spaces, the density of population, and the location and use of buildings, structures for trade, industry, residence or other purposes, to regulate markets, and prescribe at what place marketable products may be sold, and to condemn and remove all buildings, or cause them to be removed, at the expense of the owner, when dangerous to life, health or other property.
 - b. To prohibit, restrict and regulate theatres, carnivals, circuses, shows, parades, exhibitions of showmen and all other public amusements and entertainments and recreations.
 - c. To regulate, restrict or prohibit the operation of pool and billiard rooms and dance halls.
 - d. To regulate and prohibit the running at large of horses, mules, cattle, sheep, swine, goats, chickens and other animals and fowl of every description.
 - e. To prevent and abate nuisances whether on public or private property. (1949, c. 71, s. 3; 1955, c. 887, s. 1; 1959, c. 1028, s. 4; 1963, c. 1166, s. 10.)

Editor's Note.—Session Laws 1955, c. 887, s. 1, designated the Camp Butner Hospital as the State Hospital at Butner. See § 122-7 and note.

Session Laws 1959, c. 1028, s. 4, changed the name of the State Hospital at Butner

to the John Umstead Hospital.

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "Hospitals Board of Control."

§ 122-96. Recordation of ordinances and regulations; printing and distribution.—All ordinances, rules and regulations adopted pursuant to the authority of this article shall be recorded in the proceedings of the North Carolina State Department of Mental Health and printed copies shall be filed in the office of the Secretary of State, and available for distribution to persons requesting the same. (1949, c. 71, s. 4; 1963, c. 1166, s. 10.)

Editor's Note.—Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "Hospitals Board of Control."

§ 122-97. Violations made misdemeanor.—Any person, firm or corporation violating any of the provisions of this article, or any ordinance, rule or regulation adopted pursuant thereto, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding fifty dollars (\$50.00) or imprisoned not exceeding thirty days or by both such fine and imprisonment. (1949, c. 71, s. 5.)

§ 122-98. Designation and powers of special police officers.—To enable the North Carolina State Department of Mental Health to enforce the provisions of this article and any rule or regulation adopted pursuant thereto, the said North Carolina State Department of Mental Health is authorized to designate one or more special police officers who shall have the same powers as peace officers now vested in sheriffs and constables within the territory embraced by the John Umstead Hospital site and any adjacent territory thereto owned or leased by the said North Carolina State Department of Mental Health. The powers herein vested in the aforementioned special police officers shall also extend to all property formerly a part

of the John Umstead Hospital site which has been subsequently acquired from the North Carolina State Department of Mental Health by purchase or lease. (1949, c. 71, s. 6; 1955, c. 887, s. 1; 1959, c. 35; c. 1028, s. 4; 1963, c. 1166, s. 10.)

Editor's Note.—Session Laws 1955, c. 887, s. 1, designated the Camp Butner Hospital as the State Hospital at Butner. See § 122-7 and note.

The first 1959 amendment added the second sentence to this section.

The second 1959 amendment changed the

name of the State Hospital at Butner to the John Umstead Hospital.

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "Hospitals Board of Control."

ARTICLE 13.

Interstate Compact on Mental Health.

§ 122-99. Compact entered into; form of compact.—The Interstate Compact on Mental Health is hereby enacted into law and entered into by this State with all other states legally joining therein in the form substantially as follows: The contracting states solemnly agree that :

Article I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but, that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

Article II

As used in this compact :

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "After-care" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Article III

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved hereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that it would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

Article IV

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

Article V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facili-

tate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

Article VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

Article VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a non-party state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

Article VIII

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

Article IX

(a) No provision of this compact except article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while

subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

Article X

(a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

Article XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

Article XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

Article XIII

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by article VII (b) as to costs or from any supplementary agreement made pursuant to article XI shall be in accordance with the terms of such agreement.

Article XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and

effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (1959, c. 1003, s. 1; 1963, c. 1184, s. 12.)

Editor's Note.—This article formerly appeared as §§ 35-64 to 35-69. It was transferred to its present position by Session Laws 1963, c. 1184, s. 12, effective July 1, 1963.

§ 122-100. **Compact Administrator.**—Pursuant to said compact, the Commissioner of Mental Health shall be the Compact Administrator and who, acting jointly with like officers of other party states, shall have power to promulgate rules and regulations to carry out more effectively the terms of the compact. The Compact Administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this State and its subdivisions in facilitating the proper administration of the compact of any supplementary agreement or agreements entered into by this State thereunder. (1959, c. 1003, s. 2; 1963, c. 1184, s. 12.)

§ 122-101. **Supplementary agreement.**—The Compact Administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to articles VII and XI of the compact. In the event that such supplementary agreements shall require or contemplate the use of any institution or facility of this State or require or contemplate the provision of any service by this State, no such agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service. (1959, c. 1003, s. 3; 1963, c. 1184, s. 12.)

§ 122-102. **Financial arrangements.**—The Compact Administrator, subject to the approval of the Director of the Budget, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this State by the compact or by any supplementary agreement entered into thereunder. (1959, c. 1003, s. 4; 1963, c. 1184, s. 12.)

§ 122-103. **Transfer of patients.**—The Compact Administrator is hereby directed to consult with the immediate family of any proposed transferee. (1959, c. 1003, s. 5; 1963, c. 1184, ss. 12, 38.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, deleted a provision requiring approval of the superior court of the county where the patient is located of a transfer from an institution in this State to an institution in another party state.

§ 122-104. **Transmittal of copies of article.**—Copies of this article shall, upon its approval, be transmitted by the Compact Administrator to the governor of each state, the attorney general of each state, the Administrator of General Services of the United States, and the council of state governments. (1959, c. 1003, s. 6; 1963, c. 1184, s. 12.)

ARTICLE 14.

Mental Health Council.

§ 122-105. **Creation of Council; membership; chairman.**—There is hereby created a Mental Health Council to be composed of the following persons: The Superintendent of Mental Hygiene, the Chairman of the North Carolina State Department of Mental Health, the Commissioner of Public Welfare, the Director of the Division of Psychological Services of the State Board of Public Welfare, the State Health Director, a representative of the North Carolina Association of Clerks of Court, the State Superintendent of Public Instruction, the Commissioner of Correctional Institutions, the Director of the Division of Vocational Rehabilitation of the State Department of Public Instruction, the Chief of the Mental Health Section

of the State Board of Health, a representative of the Medical Society of the State of North Carolina, a dentist licensed to practice in North Carolina appointed by the Governor after requesting recommendations from the president of the North Carolina Dental Society, a representative of the North Carolina Neuropsychiatric Association, a representative of the North Carolina Mental Hygiene Society, a representative of the Department of Psychiatry of each of the four-year medical schools in the State, a representative of the North Carolina Psychological Association, a representative of the North Carolina Conference for Social Service, a representative of the State Congress of Parents and Teachers, and a representative of the Eugenics Board. The Mental Health Council is hereby empowered to invite additional organizations to name representatives to the council. (1945, c. 952, s. 61; 1955, c. 486; 1957, c. 1357, s. 15; 1963, c. 326; c. 1166, s. 10; c. 1184, s. 13.)

Editor's Note.—The 1955 amendment rewrote this section.

The 1957 amendment, effective January 1, 1958, substituted "State Health Director" for "State Health Officer."

The first 1963 amendment rewrote the part of this section relating to the dentist member.

Pursuant to Session Laws 1963, c. 1166, s. 10, "State Department of Mental Health" has been substituted for "Hospitals Board of Control."

This article formerly appeared as §§ 35-61 to 35-63. It was transferred to its present position by Session Laws 1963, c. 1184, s. 13, effective July 1, 1963.

§ 122-106. Functions; meetings; annual report.—The function of the Mental Health Council shall be to consider ways and means to promote mental health in North Carolina and to study needs for new legislation pertaining to mental health of the citizens of the State. The Council shall meet at least twice a year and file an annual report with the Governor. (1945, c. 952, s. 61; 1963, c. 1184, s. 13.)

§ 122-107. Members not State officers.—The members of the Mental Health Council shall not be considered as State officers within the meaning of article XIV, section seven of the North Carolina Constitution. (1945, c. 952, s. 61; 1963, c. 1184, s. 13.)

Chapter 123.

Impeachment.

Article 1. The Court.

- Sec.
123-1. Senate is court of impeachment;
quorum.
123-2. Chief Justice presides in impeachment of Governor.
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123-4. Power of presiding officer.
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Procedure in Impeachment.

- 123-6. Articles of impeachment preferred.

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- 123-7. When President of Senate impeached, another officer chosen.
123-8. Notice given to the accused.
123-9. Accused entitled to counsel.
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Article 3.

Effect of Impeachment.

- 123-12. Accused suspended during trial.
123-13. Manner of conviction; judgment; indictment.

ARTICLE 1.

The Court.

§ 123-1. **Senate is court of impeachment; quorum.**—The court for the trial of impeachments shall be the Senate. A majority of the members shall be necessary to constitute a quorum. (Const., art. 4, s. 3; 1868-9, c. 168, s. 1; Code, ss. 2923, 2924; Rev., s. 4623; C. S., s. 6244.)

§ 123-2. **Chief Justice presides in impeachment of Governor.**—When the Governor of the State, or Lieutenant-Governor, upon whom the powers and duties of the office of Governor have devolved, is impeached, the Chief Justice of the Supreme Court shall preside; and in a case requiring the Chief Justice to preside, notice shall be given him, by order of the Senate, of the time and place fixed for the consideration of the articles of impeachment, with a request to attend; and the Chief Justice shall preside over the Senate during the consideration of said articles upon the trial of the person impeached. But the Chief Justice shall not vote on any question during the trial, and shall pronounce decision only as the organ of the Senate with its assent. (Const., art. 4, s. 4; 1868-9, c. 168, s. 6; Code, s. 2927; Rev., s. 4624; C. S., s. 6245.)

§ 123-3. **Power of the Senate as a court.**—The Senate, as a court, shall have power to compel the attendance of parties and witnesses, to enforce obedience to its orders, mandates, writs, precepts, and judgments, to preserve order, to punish, in a summary way, contempts of its authority, orders, mandates, writs, precepts, or judgments, to adjourn from time to time, and to make all lawful rules and regulations which it may deem essential or conducive to the ends of justice. (1868-9, c. 168, s. 4; Code, s. 2926; Rev., s. 4626; C. S., s. 6246.)

§ 123-4. **Power of presiding officer.**—The presiding officer of the Senate shall have power:

- (1) To direct all necessary preparations in the Senate chamber.
- (2) To make and issue by himself or by the clerk of the Senate all orders, mandates, writs, and precepts authorized by law or by the Senate.
- (3) To direct all the forms of procedure during the trial not otherwise specially provided for.
- (4) To decide in the first instance, without a division, all questions of evidence and incidental questions; but the same shall, on demand of one-fifth of the members present, be decided by yeas and nays. (1868-9, c. 168, s. 5; Code, s. 2927; Rev., s. 4627; C. S., s. 6247.)

§ 123-5. Causes for impeachment.—Every officer in this State shall be liable to impeachment for:

- (1) Corruption or other misconduct in his official capacity.
- (2) Habitual drunkenness.
- (3) Intoxication while engaged in the exercise of his office.
- (4) Drunkenness in any public place.
- (5) Mental and physical incompetence to discharge the duties of his office.
- (6) Any criminal matter, the conviction whereof would tend to bring his office into public contempt. (1868-9, c. 168, s. 16; Code, s. 2937; Rev., s. 4628; C. S., s. 6248.)

A judge of probate is not subject to impeachment under this section. *People v. Heaton*, 77 N. C. 18 (1877).

ARTICLE 2.

Procedure in Impeachment.

§ 123-6. Articles of impeachment preferred.—All impeachments must be delivered by the House of Representatives to the presiding officer of the Senate, who shall thereupon cause proclamation to be made in the following words:

“All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of North Carolina articles of impeachment against”

After which the articles shall be exhibited, and then the presiding officer of the Senate shall inform the House of Representatives that the Senate will take proper order on the subject of impeachment, of which due notice shall be given to the House of Representatives. (1868-9, c. 168, ss. 2, 3; Code, s. 2925; Rev., s. 4630; C. S., s. 6249.)

§ 123-7. When President of Senate impeached, another officer chosen.—If the President of the Senate be impeached, notice thereof shall immediately be given to the Senate by the House of Representatives, in order that another President may be chosen. (1868-9, c. 168, s. 14; Code, s. 2935; Rev., s. 4631; C. S., s. 6250.)

§ 123-8. Notice given to the accused.—The Senate, upon the presentation of articles of impeachment and its organization as a court, shall forthwith cause the person impeached to appear and answer the articles exhibited, either in person or by attorney. He shall be entitled to a copy of the impeachment and have a reasonable time to answer the same. (1868-9, c. 168, s. 7; Code, s. 2928; Rev., s. 4632; C. S., s. 6251.)

§ 123-9. Accused entitled to counsel.—The person accused is entitled on the trial of impeachment to the aid of counsel. (1868-9, c. 168, s. 8; Code, s. 2929; Rev., s. 4629; C. S., s. 6252.)

§ 123-10. Time of hearing fixed.—When issue is joined in the trial of an impeachment the court shall fix a time and place for the trial thereof. (1868-9, c. 168, s. 9; Code, s. 2930; Rev., s. 4633; C. S., s. 6253.)

§ 123-11. Oath administered to members.—At the time and place appointed, and before the commencement of the trial, the presiding officer of the Senate shall administer to each member of the court then present, and to other members as they appear, an oath or affirmation truly and impartially to try and determine the charge in question, under the Constitution and laws, according to the evidence. No member of the court shall sit or give his vote upon the trial until he shall have taken such oath or affirmation. (1868-9, c. 168, s. 10; Code, s. 2931; Rev., s. 4625; C. S., s. 6254.)

ARTICLE 3.

Effect of Impeachment.

§ 123-12. **Accused suspended during trial.**—Every officer impeached shall be suspended from the exercise of his office until his acquittal. (1868-9, c. 168, s. 13; Code, s. 2934; Rev., s. 4634; C. S., s. 6255.)

§ 123-13. **Manner of conviction; judgment; indictment.**—No person shall be convicted on an impeachment without the concurrence of two-thirds of the senators present. Upon a conviction of the person impeached, judgment may be given that he be removed from office, or that he be disqualified to hold any office of honor, trust, or profit under this State, or both. Every person convicted on impeachment shall, nevertheless, be liable to indictment and punishment according to law. (Const., art. 4, ss. 3, 4; 1868-9, c. 168, ss. 11, 12, 15; Code, ss. 2932, 2933, 2936; Rev., s. 4635; C. S., s. 6256.)

Chapter 124.

Internal Improvements.

Sec.	Sec.
124-1. Governor and Council to control internal improvements.	124-4. Report to General Assembly; contents.
124-2. State deemed shareholder in corporation accepting appropriation.	124-5. Approval of encumbrance on State's interest in corporations.
124-3. Report of railroad, canal, etc.; contents.	124-6. Appointment of proxies, etc.
	124-7. Power of investigation of corporations.

§ 124-1. **Governor and Council to control internal improvements.**—The Governor and Council of State shall have charge of all the State's interest in all railroads, canals and other works of internal improvements. (1925, c. 157, s. 1.)

§ 124-2. **State deemed shareholder in corporation accepting appropriation.**—When an appropriation is made by the State to any work of internal improvement conducted by a corporation, the State shall be considered, unless otherwise directed, a stockholder in such corporation, and shall have as many shares as may correspond with the amount of money appropriated; and the acceptance of such money shall be deemed to be a consent of the corporation to the terms herein expressed. (1925, c. 157, s. 2.)

§ 124-3. **Report of railroad, canal, etc.; contents.**—The president or other chief officer of every railroad, canal, or other public work of internal improvement in which the State owns an interest, shall, when required to do so by the Governor, make or cause to be made to the Governor and Council of State a written report of its affairs. This report shall show:

- (1) Number of shares owned by the State.
- (2) Number of shares owned otherwise.
- (3) Face value of such shares.
- (4) Market value of each of such shares.
- (5) Amount of bonded debt, and for what purpose contracted.
- (6) Amount of other debt, and how incurred.
- (7) If interest on bonded debt has been punctually paid as agreed; if not, how much in arrears.
- (8) Amount of gross receipts for past year, and from what sources derived.
- (9) An itemized account of expenditures for past year.
- (10) Any lease or sale of said property, or any part thereof, to whom made, for what consideration, and for what length of time.
- (11) Suits at law pending against his company concerning its bonded debt, or in which title to all or any part of such road or canal is concerned.
- (12) Any sales of stock owned by the State, by whose order made, and disposition of the proceeds.

Any person failing to report as required by this section shall be guilty of a misdemeanor and be fined or imprisoned at the discretion of the court. (1925, c. 157, s. 3.)

§ 124-4. **Report to General Assembly; contents.**—The Governor and Council of State shall biennially report to the General Assembly:

- (1) The condition of all railroads, canals, or other works of internal improvement in which the State has an interest, and they shall at the same time suggest such improvement, enlargement, or extension of such work as they shall deem proper, and such new works of similar nature as shall seem to them to be demanded by the growth of trade or the general prosperity of the State.
- (2) The amount, condition, and character of the State's interest in other railroads, roads, canals, or other works of internal improvement in which

the State has taken stock, to which she has loaned money, or whose bonds she holds as security.

- (3) The condition of such roads or other corporate bodies, in detail, as are referred to in the previous section, giving their entire financial condition, the amount and market value of the stock, receipts and disbursements for the previous year or since the last report; the amount of real and personal property of such corporations, its estimated value, and such suggestions with regard to the State's interest in the same as may to them seem warranted by the status of the roads or corporations.
- (4) The names of all persons failing or refusing to report as is required by law. (1925, c. 157, s. 4.)

§ 124-5. Approval of encumbrance on State's interest in corporations.—No corporation or company in which the State has or owns any stock or any interest shall sell, lease, mortgage, or otherwise encumber its franchise, right of way, or other property, except by and with the approval and consent of the Governor and Council of State. (1925, c. 157, s. 5.)

Cross Reference.—As to conveyances of property held by State institutions, agencies, etc., see §§ 143-147 through 143-150.

§ 124-6. Appointment of proxies, etc.—The Governor shall appoint on behalf of the State all such officers or agents as, by any act, incorporating a company for the purpose of internal improvement, are allowed to represent the stock or other interests which the State may have in such company; and such person or persons shall cast the vote to which the State may be entitled in all the meetings of the stockholders of such company under the direction of said Governor; and the said Governor may, if in his opinion the public interest so requires, remove or suspend such persons, officers, agents, proxies, or directors in his discretion. (1925, c. 157, s. 6.)

§ 124-7. Power of investigation of corporations.—The Governor and Council of State shall have the power to investigate the affairs of any corporation or association described in § 124-3 and may require the Attorney General or the Utilities Commission to assist in making such investigation under the rules and regulations prescribed in chapter sixty-two. (1925, c. 157, s. 7; 1933, c. 134, s. 8; 1941, c. 97, s. 1.)

Chapter 125.

Libraries.

Article 1. State Library.

Sec.	State Library.	Sec.	State Library.
125-1.	Name.	125-7.	State policy as to public library service; annual appropriation therefor; administration of funds.
125-2.	Powers and duties of Library.	125-8.	Library authorized to accept and administer funds from federal government and other agencies.
125-3.	Board of trustees.	125-9.	Library Certification Board.
125-4.	Librarian.	125-10.	Temporary certificates for public librarians.
125-5.	Public libraries to report to State Library.	125-11.	Failure to return books.
125-6.	Librarian's seal.		

ARTICLE 1.

State Library.

§ 125-1. **Name.**—The library agency of the State of North Carolina shall be the North Carolina State Library. (1955, c. 505, s. 3.)

Editor's Note.—Session Laws 1955, c. 505, s. 3, rewrote this chapter, which became effective July 1, 1956. For consolidation of library agencies and transfer of powers and duties, etc., see Session Laws 1955, c. 505, ss. 1, 2 and 5.

§ 125-2. **Powers and duties of Library.**—The North Carolina State Library shall have the following powers and duties:

- (1) To adopt a seal for use in official business.
- (2) To make to the Governor a biennial report of its activities and needs, including recommendations for improving its services to the State, to be transmitted by the Governor to the General Assembly.
- (3) To accept gifts, bequests and endowments for the purposes which fall within the general legal powers and duties of the State Library. Unless otherwise specified by the donor or legator, the Library may either expend both the principal and interest of any gift or bequest or may invest such sums in whole or in part, by and with the consent of the State Treasurer, in securities in which sinking funds may be invested under the provisions of G. S. 142-34.
- (4) To purchase and maintain a general collection of books, periodicals, newspapers, maps, films and audio-visual materials, and other materials for the use of the people of the State as a means for the general promotion of knowledge within the State. The scope of the Library's collections shall be determined by the board of trustees on recommendation of the State Librarian, and, in making these decisions, the board of trustees and Librarian shall take into account the book collections of public libraries and college and university libraries throughout the State and the availability of such collections to the general public. All materials owned by the State Library shall be available for free circulation to public libraries and to all citizens of the State under rules and regulations fixed by the Librarian and approved by the board of trustees, except that the Librarian, with the approval of the board, may restrict the circulation of books and other materials which, because they are rare or are used intensively in the Library for reference purposes or for other good reasons, should be retained in the Library at all times.
- (5) To give assistance, advice and counsel to other State agencies maintaining special reference collections as to the best means of establishing and administering such libraries and collections, and to establish in the State Library a union catalogue of all books, pamphlets and other materials owned and used for reference purposes by all other State agencies in Raleigh and of all books, pamphlets and other materials maintained by

public libraries in the State which are of interest to the people of the whole State. Where practical, the State Library may maintain a union catalogue of a part or all of the book collections in the Supreme Court Library, the North Carolina State College Library, and other libraries in the State for the use and convenience of patrons of the State Library.

- (6) To fix reasonable penalties for damage to or failure to return any book, periodical or other material owned by the Library, or for violation of any rule or regulation concerning the use of books, periodicals, and other materials in the custody of the Library.
- (7) To maintain at least two sets of the laws and journals of the General Assembly for the use of members of the General Assembly while in session. Before each session of the General Assembly the Librarian shall have these and other requested materials moved into the Senate and House chambers for the use of members of the General Assembly.
- (8) To give assistance, advice and counsel to all libraries in the State, to all communities which may propose to establish libraries, and to all persons interested in public libraries, as to the best means of establishing and administering such libraries, as to the selection of books, cataloguing, maintenance and other details of library management.
- (9) To enter into contracts with library agencies of other states for providing library service for the blind in this State and other states, provided adequate compensation is paid for such service and such contract is otherwise deemed advantageous to this State. (1955, c. 505, s. 3; 1961, c. 1161.)

Editor's Note.—The 1961 amendment added subdivision (9).

§ 125-3. **Board of trustees.**—(a) Creation; Membership; Terms.—The North Carolina State Library shall be governed by a board of trustees composed of eight persons, six members appointed by the Governor for six-year overlapping terms and the Superintendent of Public Instruction and the Librarian of the University of North Carolina, ex officio. All appointments shall be for six-year terms following the expiration of the terms of the original members of the board appointed effective July 1, 1955, two of whom were appointed for two-year terms, two for four-year terms, and two for six-year terms. All members appointed to the board shall serve for the duration of their respective terms and until their successors are appointed and qualified. Any vacancy occurring in the membership of the board because of death, resignation or otherwise shall be filled by the Governor for the unexpired term of the member causing such vacancy.

(b) Powers of Ex Officio Members.—The Superintendent of Public Instruction and the Librarian of the University of North Carolina shall have all the privileges, rights, powers and duties held by appointive members under the provisions of this chapter.

(c) Compensation.—The members of the board of trustees shall serve without salary, but they shall be allowed their actual expenses when attending to their official duties, to be paid out of funds appropriated for the maintenance of the State Library.

(d) Organization; Meetings.—The board of trustees shall elect from its appointive members a chairman and such other officers as it may choose, for such terms as it may designate in its rules and regulations. The board shall meet regularly, and at least once every quarter, at places and dates to be determined by the board. Special meetings may be called by the chairman on his own initiative and must be called by him at the request of two or more members of the board. All members shall be notified by the chairman in writing of the time and place of regular and special meetings at least seven days in advance of such meeting, except that meetings may be held on shorter notice if all members of the board shall agree. Four members shall constitute a quorum. The chairman may appoint members to such committees as the work of the board may require. The State Librarian shall serve as secretary to the board and shall keep an accurate and complete record of all meetings.

(e) Powers and Duties.—The board of trustees shall be the governing body for the North Carolina State Library and shall have the power to adopt rules and regulations for its own government and for the conduct of any of the functions assigned to the Library under the provisions of this chapter. The board shall fix the policies under which the Librarian and other employees of the Library shall carry out the duties imposed upon the Library. (1955, c. 505, s. 3.)

§ 125-4. Librarian.—The board of trustees of the State Library shall appoint a State Librarian whose duty it shall be, under the supervision of the board, to direct and administer the work and activities of the Library as defined by law. In choosing the State Librarian the board shall take into consideration the functions of the Library and the experience required to administer such functions, and shall fix standard of professional library training and library administrative experience which the State Librarian must meet in order to assure competent administration of the Library. These standards must be equal to those established for chief county librarians by the North Carolina Library Certification Board. The Librarian shall serve at a salary to be fixed by the Governor and approved by the Advisory Budget Commission. The board, after proper notice and hearing, may remove the Librarian from office for neglect of duty or any failure to perform his duties in accordance with the standards of performance deemed necessary by the board for effective administration of the Library. The Librarian may employ such other qualified persons as may be needed to perform the functions of the Library, subject to the provisions of the State Personnel Act. (1955, c. 505, s. 3.)

§ 125-5. Public libraries to report to State Library.—Every public library in the State shall make an annual report to the State Library in such form as may be prescribed by the board of trustees. The term "public library" shall, for the purpose of this section, include subscription libraries, college and university libraries, legal association, medical association, Supreme Court, and other special libraries. (1955, c. 505, s. 3.)

§ 125-6. Librarian's seal.—It shall be the duty of the Secretary of State to furnish the State Librarian with a seal of office. The State Librarian is authorized to certify to the authenticity and genuineness of any document, paper, or extract from any document, paper, or book or other writing which may be on file in the Library. When a certificate is made under his hand and attested by his official seal, it shall be received as prima facie evidence of the correctness of the matter therein contained, and as such shall receive full faith and credit. (1955, c. 505, s. 3.)

§ 125-7. State policy as to public library service; annual appropriation therefor; administration of funds.—(a) It is hereby declared the policy of the State to promote the establishment and development of public library service throughout all sections of the State.

(b) For promoting, aiding, and equalizing public library service in North Carolina a sum shall annually be appropriated out of the monies within the State treasury to be known as the Aid to Public Libraries Fund.

(c) The fund herein provided shall be administered by the board of trustees of the North Carolina State Library, which ~~board~~ ^{board of trustees} shall frame bylaws, rules and regulations for the allocation and administration of such funds. The funds shall be used to improve, stimulate, increase and equalize public library service to the people of the whole State, shall be used for no other purpose, except as herein provided, and shall be allocated among the counties in the State taking into consideration local needs, area and population to be served, local interest and such other factors as may affect the State program of public library service.

(d) For the necessary expenses of administration, allocation, and supervision, a sum not to exceed 7 per cent (7%) of the annual appropriation may annually be used by the North Carolina State Library.

(e) The fund appropriated under this section shall be separate and apart from

the appropriations of the North Carolina State Library, which appropriation shall not be affected by this section or the appropriation hereunder.

(f) The powers herein granted shall be in addition to and not in subrogation of, or repeal of, any power or authority now or heretofore granted to the North Carolina State Library or the North Carolina Library Commission. (1955, c. 505, s. 3.)

§ 125-8. Library authorized to accept and administer funds from federal government and other agencies.—The North Carolina State Library is hereby authorized and empowered to receive, accept and administer any money or monies appropriated or granted to it, separate and apart from the appropriation by the State for the North Carolina State Library, for providing and equalizing public library service in North Carolina:

- (1) By the federal government and,
- (2) By any other agencies, private and/or otherwise.

The fund herein provided for shall be administered by the board of trustees of the North Carolina State Library, which board shall frame bylaws, rules and regulations for the allocation and administration of this fund. This fund shall be used to increase, improve, stimulate and equalize library service to people of the whole State, and shall be used for no other purpose whatsoever except as hereinafter provided, and shall be allocated among the counties of the State, taking into consideration local needs, area and population to be served, local interests as evidenced by local appropriations, and such other factors as may affect the State program of library service. Any gift or grant from the federal government or other sources shall become a part of said funds, to be used as part of the State fund, or may be invested as the board of trustees of the State Library may deem advisable, according to provisions of G. S. 125-5 (5), the income to be used for the promotion of libraries as stated in this section. (1955, c. 505, s. 3.)

Editor's Note.—The reference near the end of this section to G. S. 125-5 (5) would seem to be an error. It is possible that § 125-2 (3) was intended.

§ 125-9. Library Certification Board.—The State Librarian, the Dean of the School of Library Science of the University of North Carolina, the President of the North Carolina Library Association, and one librarian appointed by the executive board of the North Carolina Library Association shall constitute the Library Certification Board. Members of the Board shall serve without pay. The Board shall issue librarian's certificates to public librarians under such reasonable rules and regulations as it may adopt. A complete record of the transactions of the Board shall be kept at all times in the office of the North Carolina State Library. (1955, c. 505, s. 3.)

§ 125-10. Temporary certificates for public librarians.—The provisions of G. S. 125-11 shall not affect any librarian who was acting as such librarian on May 4, 1933, and any person who was serving as a librarian on that date shall be entitled to receive a certificate in accordance with the position then held. Upon the submission of satisfactory evidence that no qualified librarian is available for appointment as chief librarian, and upon written application by the Library board of trustees for issuance of a temporary certificate to an unqualified person who is available for the position, a temporary certificate, valid for one year only, may be issued to such persons by the Library Certification Board. (1955, c. 505, s. 3.)

Editor's Note.—The reference near the beginning of this section to G. S. 125-11 would seem to be an error. It is possible that G. S. 125-9 was intended.

§ 125-11. Failure to return books.—Any person who shall fail to return any book, periodical, or other material withdrawn by him from the Library shall be guilty of a misdemeanor punishable by a fine of not more than fifty dollars (\$50.00) or imprisonment for not more than 30 days if he shall fail to return the borrowed material within 30 days after receiving a notice from the State Librarian that the material is overdue. The provisions of this section shall not be in effect unless a copy of this section is attached to the overdue notice by the State Librarian. (1955, c. 505, s. 3.)

Chapter 126.

Merit System Council.

Sec.	Sec.
126-1. Appointment of members of Merit System Council; qualifications; terms; compensation.	appointments.
126-2. Supervisor of merit examinations; rules and regulations; examinations.	126-9. Admission to examinations without regard to minimum qualifications; probationary employee.
126-3. Organization of Council; meetings; representation of State agencies; duties and pay of supervisor.	126-10. Original appointments for probationary period; when permanent appointment begins; statement from employee's supervisor; recommendations by personnel officer; notice to employee.
126-4. Competitive examinations for all positions; moral character of applicants.	126-11. Filling vacancies; promotions.
126-5. Present employees previously examined.	126-12. Dismissal or suspension of employees; separations.
126-6. Persons previously examined and on eligible list.	126-13. Appeal from dismissal, suspension, or demotion.
126-7. Notice of time and place of examinations.	126-14. Authority of Merit System Council.
126-8. Register of applicants passing examinations; method of making	126-15. Application of chapter.
	126-16. Effect on certain existing laws.
	126-17. Purpose of chapter clarified.

§ 126-1. Appointment of members of Merit System Council; qualifications; terms; compensation.—The Governor of North Carolina is hereby authorized to appoint a Merit System Council, which shall be composed of five members, all of whom shall be public-spirited citizens of this State of recognized standing in the improvement of public administration and in the impartial selection of efficient government personnel for the Employment Security Commission, the North Carolina Medical Care Commission, the State Board of Health, the State Board of Public Welfare, the State Civil Defense Agency and the State Commission for the Blind. At least one of the members of the Council shall be a person who has had experience in county government. Two of the members of the Council shall also serve as members of the State Personnel Council. No Council member shall have held political office or have been an officer in a political organization during the year preceding his appointment, nor shall he hold such office during his term. No member of the Council shall have been an employee of any of the agencies within one year prior to his appointment. One member appointed hereunder shall serve for a term of two years, two members shall serve for a term of four years, and two members shall serve for a term of six years from the date of their appointments, and their successors shall be appointed by the Governor and shall serve for a term of six years and until their successors are appointed and qualified. In case of a vacancy in any of the above terms, the person appointed to fill such vacancy shall be appointed only for the unexpired term. The members of the Merit System Council shall be paid seven dollars (\$7.00) per diem and actual travel expense for each day when they are in attendance on a meeting of the Council but shall receive no other salary. (1941, c. 378, s. 1; 1947, c. 598, s. 1; c. 933, s. 4; 1949, c. 492; 1957, c. 100, s. 1; c. 1004, s. 1; c. 1037; 1959, c. 1233, s. 1.)

Editor's Note.—The first 1947 amendment substituted "Employment Security Commission" for "Unemployment Compensation Commission" in the first sentence, and the second 1947 amendment inserted therein "the North Carolina Medical Care Commission." The 1949 amendment inserted a provision as to employees of the Hospitals Board of Control.

The first 1957 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Wel-

fare" in the first sentence. The second 1957 amendment inserted the second and third sentences. And the third 1957 amendment deleted from the first sentence the former provision relating to employees of the North Carolina State Hospitals Board of Control.

The 1959 amendment inserted "the State Civil Defense Agency."

Session Laws 1959, c. 1233, s. 2½, provides: "In no event shall this act apply to State or local civil defense directors; mem-

bers of State and local boards or commissions; members of advisory councils or committees, or similar boards paid only for attendance at meetings; State and local officials serving ex officio and performing incidental administrative duties; janitors; professional personnel who are paid for any form of medical or other professional services, and who are not engaged in the performance of administrative duties; and attorneys serving as legal counsel; nor to those county, city or other local civil de-

fense agencies and offices who do not desire to receive federal matching funds for personnel and administrative costs."

Session Laws 1959, c. 1233, s. 4, provides: "This act shall not become effective unless and until the Congress of the United States shall implement Public Law 85-606, 85th Congress by appropriating federal funds with which to match State and local funds for the cost of personnel and administration for State and local civil defense organizations."

§ 126-2. Supervisor of merit examinations; rules and regulations; examinations.—The supervisor of merit examinations appointed under the provisions of article 2 of chapter 143 of the General Statutes, as amended and rewritten by the General Assembly of 1949, in co-operation with the Merit System Council, and with the approval of the State Personnel Director, the State agencies affected by this chapter, as amended, and the federal security agency or other federal agency or department charged with the administration of the Federal Social Security Laws, shall prepare rules and regulations, and prepare and give examinations for and to all employees and applicants for employment and/or promotions of the agencies or departments affected by this chapter. Such rules and regulations shall be printed and made available for public inspection and for the use of employees and applicants for employment in said agencies or departments. (1941, c. 378, s. 2; 1949, c. 718, s. 2; 1957, c. 1004, s. 3.)

Editor's Note.—The 1949 amendment rewrote this section.

The 1957 amendment deleted "job descrip-

tions and specifications," formerly appearing immediately after "regulations" near the end of the first sentence.

§ 126-3. Organization of Council; meetings; representation of State agencies; duties and pay of supervisor.—The said Council shall meet as soon as practicable and organize by electing one of its members as chairman and one who shall act as secretary. The secretary shall keep the minutes of the proceedings of the said Council and shall be guardian of all papers pertaining to the business of said Council. Meetings of the Council shall be held as often as necessary and practicable upon the call of the chairman. The State agencies shall have the right to be represented at all meetings of the Council but such representation shall be without voting power. The supervisor of merit examinations, above provided for, shall keep a record of all examinations held, and shall perform such other duties as the Council shall prescribe for which he shall be paid compensation to be fixed by the State Personnel Director. (1941, c. 378, s. 3; 1949, c. 718, s. 3.)

Editor's Note.—The 1949 amendment substituted "State Personnel Director" for "Director of the Budget."

§ 126-4. Competitive examinations for all positions; moral character of applicants.—All applicants for positions in the agencies or departments affected by this chapter shall be subjected to an examination by the Merit System Council which shall be competitive and free to all persons meeting requirements prescribed by said Council, subject to reasonable and proper limitations as to age, health, and moral character, which said examinations shall be practical in their character and shall relate to those matters tending fairly to test the capacity and qualifications of the applicants to discharge proficiently the duties of the position to which they seek appointment, and shall include examinations as to physical and mental qualifications as well as general fitness; but no such applicant shall be examined concerning his or her political or religious opinions or affiliations. The said Council shall establish such necessary and proper regulations as it sees fit relating to the moral worth and character of all applicants for positions in the agencies and departments affected by this chapter, to the end that all persons certified by said Council as eligible for

employment in said agencies or departments shall be persons of good character as well as possessing necessary mental and physical qualifications. (1941, c. 378, s. 4.)

§ 126-5. Present employees previously examined.—All employees presently employed in the agencies or departments affected by this chapter and who have heretofore taken and passed merit examinations under the Merit Rating System now in effect, shall not be required to take further examinations as herein provided. (1941, c. 378, s. 5.)

§ 126-6. Persons previously examined and on eligible list.—All persons who have successfully passed merit examinations under the Merit Rating System now in effect and are shown on the register as eligible for employment shall not be required to take further examinations as provided herein and shall have their names placed on the new registers of those eligible for employment to be established under this chapter. (1941, c. 378, s. 5½.)

§ 126-7. Notice of time and place of examinations.—Notice of the time and place of every examination shall be given by the Merit System Council by publication once a week for two weeks immediately preceding such examination, in some newspaper having a general circulation in the State of North Carolina, and such notice shall be posted in a conspicuous place in the office of the supervisor of merit examinations, in the city of Raleigh for at least two weeks next preceding such examination. (1941, c. 378, s. 6.)

§ 126-8. Register of applicants passing examinations; method of making appointments.—Said Council shall prepare and keep as a permanent record of the Council a register of all persons successfully passing such examinations, accurately reflecting the grades made by such applicants. Whenever any appointment is to be made to any of said agencies or departments, the Council shall certify from said registered list of successful applicants three names for each appointment so to be made, and the appointments shall be made only from among the names thus certified by the Council, exclusive of the names of those persons who failed to answer or who declined appointment or of those names to whom the appointing authority offers an objection in writing, which objection is sustained by the supervisor with the approval of the Council. (1941, c. 378, s. 7.)

§ 126-9. Admission to examinations without regard to minimum qualifications; probationary employee.—An employee who is certified by the agency as having given satisfactory service continuously for six calendar months preceding January first, one thousand nine hundred and forty or any other date or dates as may be required by the federal agencies supervising the expenditures of federal funds through the State agencies affected by this chapter may be admitted to the examination for the position held by him on March 15, 1941, without regard to minimum qualifications of training and experience. Upon certification of the supervisor that he has attained a passing grade in the examination held in accordance with the provisions of this chapter he may be appointed as a probationary employee. The probationary period of such an employee shall date from the certification of the supervisor that he has attained a passing grade. (1941, c. 378, s. 8.)

§ 126-10. Original appointments for probationary period; when permanent appointment begins; statement from employee's supervisor; recommendations by personnel officer; notice to employee.—All original appointments to permanent positions shall be made from officially promulgated registers for a probationary period of six months. The probationary period shall be an essential part of the examination process, and shall be utilized for the most effective adjustment of a new employee and for the elimination of any probationary employee whose performance does not meet the required standard of work. Permanent appointment of a probationary employee shall begin with the date ending the probationary period, provided that the personnel officer of the agency concerned has received

from the employee's supervisor a statement in writing that the services of the employee during the probationary period have been satisfactory and that the employee is recommended to be continued in the service. The statement shall contain an appraisal of the value of the employee's services and shall include a service rating upon a form prescribed by the supervisor of merit examinations. It shall be the responsibility of the personnel officer to obtain such statement with recommendations four weeks prior to the end of the probationary period. The personnel officer, on the basis of such statement and recommendations, shall make recommendations to the appointing authority, and if it is determined that the services of the employee have been unsatisfactory, the personnel officer shall notify the employee in writing at least fifteen days in advance of the date his services are to be terminated. An employee whose appointment is to be made permanent shall also be notified. The personnel officer shall notify the merit system supervisor of the action taken regarding the services of the employee. (1941, c. 378, s. 9.)

§ 126-11. Filling vacancies; promotions.—As far as is practicable and feasible, a vacancy shall be filled by promotion of a qualified permanent employee based upon individual performance, as evidenced by recorded service ratings, with due consideration for length of service, and upon capacity for the new position. Preference in promotion may be given to employees within the agencies, and all inter-agency promotions must be approved by the appointing authorities concerned. A candidate for promotion must be certified by the supervisor to possess the qualifications for the position as set forth in the specifications for the class of position for which he is a candidate, and he shall be required by the supervisor to qualify for the new position by promotional competitive or noncompetitive examination administered by the supervisor. (1941, c. 378, s. 10.)

§ 126-12. Dismissal or suspension of employees; separations.—The appointing authority, fifteen days after notice in writing to an employee stating specific reasons therefor, may dismiss any employee who is negligent or inefficient in his duties, or unfit to perform his duties and/or who is found to be guilty of gross misconduct; or who is convicted of any crime involving moral turpitude. When such conviction is final the employee shall have no recourse to appeal to the Council. The appointing authority may, after written notice, suspend any employee without pay for delinquency or misconduct, for a period not to exceed thirty calendar days in any one calendar year. The appointing authority may separate any employee, without prejudice, because of lack of funds or curtailment of work. No permanent employee, however, shall be separated while there are emergency, intermittent, temporary, provisional, or probationary employees serving in the same class of position in the same agency. The order of separations due to reduction of force shall be based upon service ratings and seniority, under a formula to be formally established by the supervisor and approved by the Council, and all such separations shall be reported to the supervisor. (1941, c. 378, s. 11.)

§ 126-13. Appeal from dismissal, suspension, or demotion.—A permanent employee who is dismissed, suspended, or demoted shall have the right to appeal to the Council not later than thirty days after the effective date of the dismissal, suspension, or demotion. Such appeal shall be in writing and shall be transmitted to the supervisor who shall arrange a formal hearing before the Council within ten days after receipt of the appeal. The supervisor shall furnish the personnel officer of the agency concerned with a copy of the appeal in advance of the hearing. Both the employee and his immediate supervisor shall be notified reasonably in advance of the hearing and shall have the right to present witnesses and give evidence before the Council. The Council, within three days after the hearing, shall make its recommendations in writing to the appointing authority for consideration by the agency. After consideration of the Council's recommendations, the agency shall make its decision which shall be final and which shall be duly recorded in the

permanent records of the agency. The personnel officer shall, in writing, promptly notify the employee of the agency's decision. (1941, c. 378, s. 12.)

§ 126-14. Authority of Merit System Council.—The Merit System Council appointed under the provisions of this chapter shall have the authority to establish, maintain and provide rules and regulations, in co-operation with the State Board of Health, the State Civil Defense Agency and the State Board of Public Welfare, for the administration of a system of personnel standards on a merit basis, including job descriptions and specifications and a uniform schedule of compensation, for all employees of the county welfare departments, all county, city or other local civil defense offices and the county, city, and district health departments. The rules and regulations governing annual leave, sick leave, hours of employment, and holidays for those employees shall be effective except when modified as follows:

- (1) When a board of county commissioners, or the governing body of a municipality, has adopted rules and regulations governing such matters for other employees under its jurisdiction, that board of county commissioners, or municipal governing body, may modify the rules and regulations of the Merit System Council governing such matters with respect to that county's welfare and/or health employees, or that municipality's health employees, as the case may be, to conform to the rules and regulations applicable to the other employees of the governmental unit; and the modified rules and regulations shall then be in effect in such county or municipality.
- (2) When two or more counties are combined in a district health department, the boards of commissioners of the counties comprising the district may jointly modify the rules and regulations of the Merit System Council governing such matters with respect to the health employees of the district department so as to make them conform generally to the rules and regulations governing other county employees in the counties comprising the district; and the modified rules and regulations shall then be in effect in such district. (1941, c. 378, s. 13; 1957, c. 100, s. 1; c. 1004, s. 4; 1959, c. 1233, s. 2.)

Cross Reference.—See note to § 126-1.

Editor's Note.—The first 1957 amendment substituted "State Board of Public Welfare" for "State Board of Charities and Public Welfare." The second 1957 amendment made the same change and rewrote the

section.

The 1959 amendment inserted "the State Civil Defense Agency" and "all county, city or other local civil defense offices" in the first sentence.

§ 126-15. Application of chapter.—Wherever the provisions of any law of the United States, or of any rule, order or regulation of any federal agency or authority, providing or administering federal funds for use in North Carolina, either directly or indirectly or as a grant-in-aid, or to be matched or otherwise, impose other or higher, civil service or merit standards or different classifications than are required by the provisions of this chapter, then the provisions of such laws, classifications, rules or regulations of the United States or any federal agency may be adopted by the Council as rules and regulations of the Council and shall govern the class of employment and employees affected thereby, anything in this chapter to the contrary notwithstanding. (1941, c. 378, s. 14; 1947, c. 781.)

Editor's Note.—The 1947 amendment substituted "United States" for "United State."

§ 126-16. Effect on certain existing laws.—Nothing in this chapter shall be construed as repealing any of the provisions of article 2 of chapter 143 of the General Statutes, as amended and rewritten by the General Assembly of 1949, relating to the State Personnel Department, nor as relieving the State Personnel Director and the State Personnel Council of the duties and responsibilities pre-

scribed therein for the State Personnel Director and the State Personnel Council. (1941, c. 378, s. 15; 1949, c. 718, s. 4.)

Editor's Note.—The 1949 amendment rewrote this section.

§ 126-17. Purpose of chapter clarified.—It is the intent and purpose of this chapter to permit and require the agencies and departments affected hereby to comply with the rules and regulations of the Federal Social Security Board and such other federal agencies as may be charged with the administration of the Social Security Act, and the rules governing the expenditure of federal and State social security funds in the administration of said laws. (1941, c. 378, s. 16.)

Chapter 127.

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ARTICLE 1.

Classification of Militia.

§ 127-1. **Composition and classes of militia.**—The militia of the State shall consist of all able-bodied male citizens of the State and of the United States between the ages of twenty-one and forty years who are not exempt by reason of aversion to bearing arms, from religious scruples; together with all other able-bodied persons who are, or have or shall have declared their intention to become, citizens of the United States, subject to such qualifications as may be hereinafter prescribed, who shall voluntarily enlist or accept commission, appointment or assignment to duty therein. The militia shall be divided into five classes: The national guard, the naval militia, historical military commands, the state defense militia, and the unorganized militia. (1917, c. 200, s. 1; C. S., s. 6791; 1949, c. 1130, s. 1; 1957, c. 1043, s. 1; 1963, c. 1016, s. 2.)

Editor's Note.—The 1949 amendment substituted "seventeen years" for "eighteen years."

The 1957 amendment substituted "four

classes" for "three classes" and inserted as one of the classes "historical military commands."

The 1963 amendment rewrote this section.

§ 127-2. Composition of national guard.—The national guard shall consist of the regularly enlisted militia, commissioned and warrant officers between such ages as may be established by regulations promulgated by the secretary of the appropriate service. (1917, c. 200, s. 2; C. S., s. 6792; 1949, c. 1130, s. 1; 1957, c. 136, s. 1; 1961, c. 192, s. 1; 1963, c. 1016, s. 2.)

Editor's Note.—The 1949 amendment substituted "seventeen" for "eighteen."

The 1957 amendment substituted "eighteen and sixty-two" for "twenty-one and sixty-four."

The 1961 amendment rewrote this section.

The 1963 amendment deleted "and" formerly appearing after "militia" and inserted "and warrant" immediately before "officers."

§ 127-3. Composition of naval militia.—The naval militia shall consist of the regularly enlisted militia between the ages of seventeen and forty-five years, organized, armed, and equipped as hereinafter provided, and commissioned officers between the ages of twenty-one and sixty-two years (naval branch), and twenty-one and sixty-four years (marine corps branch); but enlisted men may continue in the service after the age of forty-five years, and until the age of sixty-two years (naval branch), or sixty-four years (marine corps branch), provided the service is continuous. (1917, c. 200, s. 3; C. S., s. 6793; 1949, c. 1130, s. 1.)

Editor's Note.—The 1949 amendment substituted "seventeen" for "eighteen" near the beginning of the section.

§ 127-3.1. Composition of historic military commands.—Historic military commands are those historic groups which remain active by meeting at least once a month and which follow military procedures. Only such groups as may be designated by the Governor shall fall within this branch of the militia. The maximum age limit prescribed by G. S. 127-1 shall not be applicable to members of historic military commands. (1957, c. 1043, s. 2.)

§ 127-3.2. Composition of State defense militia.—The State defense militia shall consist of commissioned, warrant and enlisted personnel called, ordered, appointed, or enlisted therein by the Governor under the provisions of article 12, G. S. 127-111 et seq. (1963, c. 1016, s. 2.)

§ 127-4. Composition of unorganized militia.—The unorganized militia shall consist of all other able-bodied citizens of the State and all other able-bodied persons who have or shall have declared their intention to become citizens of the United States, who shall be at least seventeen years of age, and, except as otherwise provided by law, under sixty-four years of age. (1917, c. 200, s. 4; C. S., s. 6794; 1949, c. 1130, s. 1; 1963, c. 1016, s. 2.)

Editor's Note.—The 1949 amendment substituted "seventeen years" for "eighteen years."

The 1963 amendment rewrote this section.

§ 127-5. Exemption from military duty.—The officers, judicial and executive, of the government of the United States and the State of North Carolina, persons in the military or naval service of the United States, custom-house clerks, persons employed by the United States in the transmission of the mail, artificers and workmen employed in the armories, arsenals, and navy yards of the United States, pilots, mariners actually employed in the sea service of any citizen or merchant within the United States, shall be exempt from military duty without regard to age, and all persons who, because of religious belief, shall claim exemption from military service, if the conscientious holding of such belief by such person shall be established under such regulations as the President shall prescribe, shall be exempted from militia service in a combatant capacity; but no person so exempted shall be exempt from militia service in any capacity that the President shall declare to be noncombatant. (1917, c. 200, s. 5; C. S., s. 6795.)

§ 127-6: Repealed by Session Laws 1963, c. 129.

§ 127-7. **Maintenance of other troops.**—In time of peace the State shall maintain only such troops as may be authorized by the President of the United States; but nothing contained in this chapter shall be construed as limiting the rights of the State in the use of the national guard or the State defense militia or both within its borders in time of peace. Nothing contained in this chapter shall prevent the organization and maintenance of State police or constabulary. (1917, c. 200, s. 8; C. S., s. 6797; 1963, c. 1016, s. 2.)

Editor's Note.—The 1963 amendment inserted "or the State defense militia or both" near the end of the first sentence.

§ 127-8. **Corps entitled to retain privileges.**—Any corps of artillery, cavalry, or infantry existing in the State on the passage of the act of Congress of May eighth, one thousand seven hundred and ninety-two, which by the laws, customs, or usages of the State has been in continuous existence since the passage of such act, under its provisions and under the provisions of section two hundred and thirty-two and sections one thousand six hundred and twenty-five to one thousand six hundred and sixty, both inclusive, of title sixteen of the revised statutes of one thousand eight hundred and seventy-three and the act of Congress of January twenty-first, one thousand nine hundred and three, relating to the militia, shall be allowed to retain its ancient privileges, subject, nevertheless, to all duties required by law of the militia; but such organizations may be a part of the national guard, and entitled to all the privileges of this chapter, and shall conform in all respects to the organization, discipline, and training of the national guard in time of war. For purposes of training and when on active duty in the service of the United States they may be assigned to higher units, as the President may direct, and shall be subject to the orders of officers under whom they shall be serving. (1917, c. 200, s. 87; C. S., s. 6798.)

ARTICLE 2.

General Administrative Officers.

§ 127-9. **Governor as commander-in-chief.**—The Governor shall be commander-in-chief, and shall have power to call out the militia to execute the law, suppress riots or insurrections, and to repel invasions. (1917, c. 200, s. 11; C. S., s. 6799.)

Cross Reference.—As to commander-in-chief of the militia, see Art. III, § 8, and Art. XII, § 3, of the Constitution.

§ 127-10. **Commander-in-chief to prescribe regulations.**—The commander-in-chief shall have the power and it shall be his duty from time to time to issue such orders and to prescribe such regulations relating to the organization of the national guard, State defense militia and naval militia as will cause the same at all times to conform to the federal requirements of the United States government relating thereto. (1917, c. 200, s. 36; C. S., s. 6800; 1963, c. 1016, s. 2.)

Editor's Note.—The 1963 amendment inserted the words "State defense militia."

§ 127-11. **Division of military staff.**—The military staff shall be divided into two kinds: The personal staff of the Governor and the administrative staff. The Governor may detail from the active list not more than ten national guard officers and two naval militia officers, who shall in addition to their regular duties perform the duties of aides-de-camp on the personal staff of the Governor. There shall be an administrative staff which shall be as is now or may from time to time be authorized by the Secretary of Defense for the national guard and the Secretary of

the Navy for the naval militia. (1917, c. 200, s. 12; C. S., s. 6801; 1959, c. 218, s. 1.)

Editor's Note.—The 1959 amendment substituted "Secretary of Defense" for "Secretary of War" near the end of the section.

§ 127-12. **Adjutant General.**—The Governor shall appoint an Adjutant General, which appointment shall carry with it the rank of major general. No person shall be appointed as Adjutant General who has had less than five years' commissioned service in an active status in any component of the armed forces of the United States. The Adjutant General, while holding such office, may be a member of the active national guard or naval militia. (1917, c. 200, s. 14; C. S., s. 6802; 1925, c. 54; 1939, c. 14; 1949, c. 1225; 1959, c. 218, s. 2.)

Editor's Note.—The 1939 amendment made this section applicable to the organized reserve corps of the United States, and the 1949 amendment rewrote this section. The 1959 amendment rewrote the latter part of the second and third sentences.

§ 127-13: Repealed by Session Laws 1959, c. 218, s. 3.

§ 127-14. **Adjutant General's department.**—There shall be an Adjutant General's department. The Adjutant General shall be the head of the department and as such subordinate only to the Governor in matters pertaining thereto. He shall make such returns and reports to the National Guard Bureau and Secretary of the Navy or to such officers as the National Guard Bureau and Secretary of the Navy may designate, at such times and in such form as may from time to time be prescribed. He shall keep a record of all officers and enlisted men, and shall also keep in his office all records and papers required by law or regulations to be filed therein. He shall make a biennial report to the Governor on or before the thirty-first day of December, including a detailed statement of all expenditures made for military purposes during that biennium. He shall also make a biennial report to the General Assembly. He shall cause to be prepared and issued all books, blank forms, etc., required to carry into full effect the provisions of this statute. All such books and blank forms shall be and remain the property of the State. The Adjutant General shall perform such other duties not herein specified as may be required by the military laws and regulations or by the Governor. The Adjutant General shall be allowed all such necessary expenses as may be incurred for printing, postage, stationery, blank books, orders, and reports required in his office, the same to constitute a charge against the general fund. The Adjutant General may appoint an assistant, which appointment may carry with it the rank of brigadier general, and such clerks and employees as may be prescribed by the Governor. An officer detailed as such assistant shall receive during the period of such service such compensation as may be authorized by the Governor. The pay of such officer shall constitute a charge against the whole sum appropriated annually for the support of the national guard. The Adjutant General may appoint an assistant adjutant general for air national guard, which appointment may carry with it the rank of brigadier general. (1917, c. 200, s. 13; C. S., s. 6803; 1927, c. 217, s. 4; 1957, c. 136, s. 2; 1959, c. 218, s. 2½; 1963, c. 1016, s. 2.)

Editor's Note.—The 1957 amendment substituted "National Guard Bureau" for "Secretary of War" in the third sentence. It also struck out "may have an assistant" following "Adjutant General" in the eleventh sentence and inserted in lieu thereof "may appoint an assistant, which appointment

may carry with it the rank of brigadier general."

The 1959 amendment added the last sentence.

The 1963 amendment changed the fifth sentence so as to provide for a biennial, rather than an annual, report.

§ 127-15. **Property and fiscal officer for North Carolina.**—The Governor of the State shall appoint, designate, or detail, subject to the approval of the Department of the Army, an officer of the national guard of the State, who shall be regarded as property and fiscal officer for North Carolina. In consideration of his

services, for the care, responsibility, and issue of federal property, the property and fiscal officer for North Carolina shall receive from the State such salary as the Governor may authorize to be just and proper; the salary to constitute a charge upon the appropriations made to the Adjutant General's department. When ordered into actual service and receiving the pay of his rank for such service, from either State or federal funds, he shall not be entitled to, or receive, any salary from the State for the period of time for which he shall receive the pay of his rank. (1917, c. 200, s. 24; C. S., s. 6804; 1957, c. 136, s. 3.)

Editor's Note.—The 1957 amendment substituted “fiscal” for “disbursing,” “Department of the Army” for “Secretary of War” and “North Carolina” for “the United States.”

§ 127-16. Bond, duties, etc., of property and fiscal officer.—The property and fiscal officer for the national guard shall be an employee of the Adjutant General's department and he shall be required to give a good and sufficient bond to the State, the amount thereof, to be determined by the Governor, for the faithful performance of his duties and for the safekeeping and proper disposition of such funds and property entrusted to his care. He shall receipt for and account for all funds and property allotted to his custody from the appropriation for military purposes, by the State, and shall make such returns and reports through the Adjutant General concerning same as may be required by the Governor or State laws. All or any disbursement of such moneys will be made by the property and fiscal officer, only upon the approval of the Adjutant General, upon such forms and under such regulations as may be prescribed by proper authority. Blank forms, books, stationery, and other necessary equipment, for use of the property and fiscal officer will be furnished through or by the Adjutant General's Department. Funds from the appropriation for military purposes will be paid to the property and fiscal officer by the State Treasurer upon requisition of the Adjutant General on the State Treasurer in accordance with the State laws, or regulations thereunder as prescribed by the State for the expenditure of appropriations made to the State departments. (1917, c. 200, s. 25; C. S., s. 6805; 1929, c. 317, s. 1; 1963, c. 1016, s. 2.)

Editor's Note.—The 1963 amendment substituted “property and fiscal officer” for “disbursing officer” at four places in this section.

§ 127-17: Repealed by Session Laws 1959, c. 218, s. 3.

§ 127-18. Advisory board.—There shall be an advisory board composed of the Adjutant General, the general officers of the active national guard, and two other members of the active national guard to be appointed by the Governor for terms of two years, which shall meet at such times as may be ordered by the Adjutant General. This board shall make such recommendations to the Governor as it may deem for the best interests of the national guard. (1917, c. 200, s. 27; C. S., s. 6807; 1921, c. 120, s. 1; 1957, c. 136, s. 4.)

Editor's Note.—The 1957 amendment rewrote this section.

ARTICLE 3.

National Guard.

§ 127-19. Organization of national guard units.—Except as otherwise specifically provided by the laws of the United States, the organization of the national guard, including the composition of all units thereof, shall be the same as that which is or may hereafter be prescribed for the regular service subject in time of peace to such general exceptions as may be authorized by the Secretary of Defense. (1917, c. 200, s. 7; C. S., s. 6808; 1959, c. 218, s. 4.)

Editor's Note.—The 1959 amendment substituted “regular service” for “regular army” and “Secretary of Defense” for “Secretary of War.”

§ 127-20. Location of units.—The Governor shall determine and fix the location of the units and headquarters of the national guard within the State; but no organization of the national guard, members of which shall be entitled to and shall have received compensation under the provisions of the act of Congress approved June third, one thousand nine hundred and sixteen, as amended, shall be disbanded without the consent of the President, nor without such consent shall the commissioned or enlisted strength of any such organization be reduced below the minimum that is now or shall be hereafter prescribed therefor by the President. (1917, c. 200, s. 9; C. S., s. 6809; 1921, c. 120, s. 2.)

§ 127-21: Repealed by Session Laws 1957, c. 136, s. 5.

§ 127-22. Officers appointed and commissioned; oath of office.—All officers of the national guard shall be appointed and commissioned by the Governor as follows, viz.:

- (1) Except as otherwise specifically provided by the laws of the United States, the qualifications for appointment as an officer in the national guard shall be the same as those prescribed for the regular establishment, subject to such general exceptions as may be authorized by the Secretary of Defense.
- (2) Candidates for such appointment shall make written application therefor on such forms as may be prescribed by the secretary of the appropriate service, to the Adjutant General's Department, State of North Carolina, through command channels for comment by endorsements thereon.
- (3) No person shall hereafter be appointed an officer of the national guard unless he has established to the satisfaction of a board of officers his physical, moral, and professional qualifications to perform the duties of the grade and position for which examined, subject to such general exceptions as may be authorized by the Secretary of Defense. The board shall consist of three or more commissioned officers of the appropriate service, appointed under such regulations as may be promulgated by the secretary of the appropriate service.
- (4) Candidates appointed as officers of the national guard shall take and subscribe to the following oath of office: "I, (First Name) (Middle Name) (Last Name) do solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the State of North Carolina against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the President of the United States and of the Governor of the State of North Carolina; that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of (Grade) (Branch or Arm of Service) in the National Guard of the State of North Carolina upon which I am about to enter; so help me God." (1917, c. 200, s. 15; C. S., s. 6811; 1921, c. 120, s. 3; 1959, c. 218, s. 5.)

Editor's Note.—The 1959 amendment rewrote subdivisions (1) and (2) and added subdivisions (3) and (4).

§ 127-23. Commissions for commandants and officers at qualified educational institutions.—The Governor of North Carolina is authorized to appoint and commission, as staff officers of the North Carolina reserve militia, the officers of any university, college, academy or other educational institution which qualifies as herein provided. Any university, college, academy or other educational institution shall be deemed qualified under this section when such institution has been regularly incorporated under and by virtue of the laws of North Carolina; the institution, as a part of its courses of study, regularly teaches military science and tactics; the Department of Defense at Washington, D. C., has detailed an officer of the armed

forces as professor or assistant professor of military science and tactics; the institution has been designated as qualified by the Secretary of the appropriate service and has been made a unit of the Senior or Junior Reserve Officers' Training Corps, or the institution, not having a unit of the Reserve Officers' Training Corps, has been approved and authorized by the Secretary of Defense to participate in the National Defense Cadet Corps Training Program or other military training programs under Title 10, United States Code, §§ 3540 and 4651.

Any qualified institution desiring the appointment of officers in the North Carolina reserve militia shall make application to the Governor setting forth all requisite facts as to its qualifications, the names of the persons to be commissioned, the rank desired for each, and the person's position at the institution. The application shall be signed by the chancellor, president, superintendent or other presiding official, under the seal of the institution. Upon receipt of the application, the Governor may appoint and commission the officers of such qualified institution as follows: The chancellor, president, superintendent or other presiding official, as colonel; the vice-president, principal or other officer second in authority, as major; the male professors and members of the faculty, as captains. The persons so commissioned shall have no connection with the national guard or other military forces of the State, nor shall they exercise any military authority other than in the discharge of their duties at their respective institutions. The commissions issued under this section may be terminated at the will of the Governor.

The Governor may annually appoint a committee of three members, one of whom shall be appointed on the recommendation of the Adjutant General, one on the recommendation of the State Superintendent of Public Instruction, and one on the recommendation of the Director of the State Board of Health, with a view to their proficiency in the several departments indicated, and the said committee shall during the school year, and while the said institutions are in session, visit all of the said educational institutions and make a thorough inspection of their military departments, their discipline, courses of study and educational departments, and their sanitary condition, and report to the Governor the result of said inspection. (1919, c. 265, ss. 1, 2, 3; C. S., s. 6812; 1929, c. 61, s. 1; 1963, c. 1095.)

Editor's Note.—The 1963 amendment rewrote this section.

§ 127-23.1. Commissions by brevet for retired officers and enlisted men.—The Governor is authorized to confer commissions by brevet in the North Carolina national guard upon officers and enlisted men of the North Carolina national guard who have been retired and who may hereafter be retired from any reserve component of the armed forces of the United States under the authority of Title III, Public Law 810, 80th Congress, 2nd Session, (Army and Air Force, Vitalization and Retirement Equalization Act of 1948), and who have satisfactorily served as an active member of the North Carolina national guard for a period of ten years. The commissions by brevet shall be in grade as follows: A commissioned officer shall be commissioned by brevet in a grade one grade higher than the highest grade satisfactorily held by him while serving on active duty during any war, including service on active duty in the Korean conflict, or while serving actively as a federally recognized officer of the North Carolina national guard; a warrant officer shall be commissioned by brevet in the grade of captain or in the highest commissioned grade satisfactorily held by him while serving on active duty during any war, including service on active duty in the Korean conflict, or while serving actively as a federally recognized member of the North Carolina national guard; an enlisted man shall be commissioned by brevet in the grade of first lieutenant or in the highest commissioned grade satisfactorily held by him while serving on active duty during any war, including service on active duty in the Korean conflict, or while serving actively as a federally recognized member of the North Carolina national guard. No officer shall be commissioned by brevet in a grade higher than that of lieutenant general.

For the purpose of computing national guard service within the meaning of this section, such service shall include extended active duty in the armed forces of the United States by any officer, warrant officer, or enlisted man, who was a member of a federally recognized unit of North Carolina national guard at the time of his induction into federal service.

The provisions of this section shall apply to officers and enlisted men of the North Carolina national guard who have been or who may hereafter be honorably retired from any component of the armed forces of the United States by reason of disability, who have attained the age of 60 years, and who have satisfactorily served as an active member of the North Carolina national guard for a period of 10 years. (1955, c. 255, s. 1; 1957, c. 1003; 1963, c. 1016, s. 2.)

Editor's Note.—The 1957 amendment added the last paragraph. forces" for "army" in the first and last paragraphs.

The 1963 amendment substituted "armed

§ 127-24: Repealed by Session Laws 1959, c. 218, s. 6.

§ 127-25. Promotion of officers by seniority and in accordance with regulations.—The promotion of all officers shall be by seniority as far as the same is practicable and to the best interest of the service within the organization, and in accordance with regulations promulgated by the secretary of the appropriate service. (1917, c. 200, s. 17; C. S., s. 6814; 1921, c. 120, s. 4; 1959, c. 218, s. 7.)

Editor's Note.—The 1959 amendment rewrote this section, which formerly related to the qualifications of national guard officers.

§ 127-26: Repealed by Session Laws 1959, c. 218, s. 6.

§ 127-27. Relative rank among officers of same grade.—Officers of the North Carolina national guard in the same grade rank among themselves according to the date of rank established by regulations promulgated by the secretary of the appropriate service and the Adjutant General of the State of North Carolina. (1917, c. 200, s. 19; C. S., s. 6816; 1921, c. 120, s. 5; 1927, c. 227, s. 1; 1959, c. 218, s. 8; 1961, c. 192, s. 2; 1963, c. 1016, s. 2.)

Editor's Note.—The 1921 and 1927 amendments rewrote this section.

The 1961 amendment rewrote this section as rewritten by the 1959 amendment.

The 1963 amendment added the reference to the Adjutant General at the end of this section.

§ 127-28: Repealed by Session Laws 1959, c. 218, s. 6.

§ 127-29. Elimination and disposition of officers; efficiency board; transfer to inactive status.—(a) Whenever the efficiency or general fitness, including physical fitness, of a national guard officer is in question, the Adjutant General, State of North Carolina, may order him to appear before an efficiency board to determine whether or not the appointment of the officer should be withdrawn. The efficiency board will be composed of not less than three commissioned officers, all senior in rank to the officer undergoing investigation. A member of the board serving in a legal or medical advisory capacity may be junior to any person, other than a judge advocate, law specialist, or medical officer being considered. The findings of an efficiency board are not final until reviewed and approved by the Adjutant General, and the Governor of the State of North Carolina.

(b) Commissions of officers of the national guard may be vacated upon resignation, absence without leave for thirty days, pursuant to sentence of a court-martial, or pursuant to regulations promulgated by the secretary of the appropriate service.

(c) Officers of the national guard may, upon their own request, be transferred to the inactive national guard, subject to such exceptions as may be authorized by the Adjutant General, State of North Carolina, or the Secretary of Defense. (1917, c. 200, s. 28; C. S., s. 6818; 1959, c. 218, s. 9.)

Editor's Note.—The 1959 amendment rewrote this section.

§ 127-30. Retirement of officers.—Retirement of officers shall be regulated so as to conform to federal laws and regulations of the United States relating to retirement of national guard officers. (1917, c. 200, s. 29; C. S., s. 6819; 1949, c. 1130, s. 2.)

Editor's Note.—The 1949 amendment rewrote this section.

§ 127-31. Enlistments in national guard; oath of enlistment.—(a) Enlistments in the national guard shall be for such periods and subject to such qualifications as prescribed by the secretary of the appropriate service.

(b) Enlisted men shall not be recognized as members of the national guard until they shall have subscribed to the following oath of enlistment: "I, (First Name) (Middle Name) (Last Name) do hereby acknowledge to have voluntarily enlisted this day of, 19...., in the (Army) (Air) National Guard of North Carolina and as a Reserve of the (Army) (Air Force) with membership in the (National Guard of the United States) (Air National Guard of the United States) for a period of years under the conditions prescribed by law, unless sooner discharged by proper authority; and I do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America and to the State of North Carolina; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States and the Governor of North Carolina and the orders of the officers appointed over me, according to law and regulations, and/or the Uniform Code of Military Justice." (1917, c. 200, s. 30; C. S., s. 6820; 1921, c. 120, s. 6; 1957, c. 136, s. 6; 1959, c. 218, s. 10.)

Editor's Note.—The 1957 amendment substituted "the Army" for "War." The 1959 amendment rewrote this section and added the provision as to oath of enlistment.

§ 127-32: Repealed by Session Laws 1959, c. 218, s. 11.

§ 127-33. Discharge of enlisted men.—(a) An enlisted man discharged from service in the national guard shall receive a discharge in writing, in such form and with such classification as is or shall be prescribed under regulations promulgated by the appropriate service.

(b) Discharges may be given prior to the expiration of terms of enlistment under such regulations as may be prescribed by the Adjutant General, State of North Carolina, or pursuant to regulations promulgated by the secretary of the appropriate service. (1917, c. 200, s. 32; C. S., s. 6822; 1959, c. 218, s. 12.)

Editor's Note.—The 1959 amendment rewrote this section.

§ 127-34. Membership continued in the national guard.—When called or ordered into federal service and discharged therefrom, members shall continue their membership in the national guard until the expiration of their enlistment or appointment, unless sooner terminated by proper authority. (1921, c. 120, s. 8; C. S., s. 6822(a); 1959, c. 218, s. 13.)

Editor's Note.—The 1959 amendment rewrote this section.

§ 127-35. Discipline and training.—The discipline of the national guard shall conform to the system which is now or may hereafter be prescribed for the armed forces, and the training shall be carried out so as to conform to the laws of the United States. (1917, c. 200, s. 33; C. S., s. 6823; 1959, c. 218, s. 14.)

Editor's Note.—The 1959 amendment rewrote this section.

§ 127-36. Uniforms, arms and equipment.—The national guard shall, as far as practicable, be uniformed, armed and equipped with the same type of uniforms,

arms and equipment as is or shall be provided for the appropriate regular service. (1917, c. 200, s. 37; C. S., s. 6824; 1959, c. 218, s. 15.)

Editor's Note.—The 1959 amendment substituted at the end of this section the words “appropriate regular service” for “regular army.”

§ 127-37. Authority to wear service medals.—The officers and enlisted men of the North Carolina national guard are hereby authorized to wear, as a part of the official uniform service medals to be selected by the advisory board created by G. S. 127-18. (1939, c. 344; 1959, c. 218, s. 16.)

Editor's Note.—The 1959 amendment substituted the reference to “advisory board” for “as herein prescribed” and deleted the former second paragraph.

§ 127-37.1. North Carolina Distinguished Service Medal.—There is hereby created the “North Carolina Distinguished Service Medal” which shall be of appropriate design, and a ribbon, together with a rosette or other device to be worn in lieu thereof. This medal and appurtenances thereto shall be of a design approved by the Governor. The Governor is authorized to present such medal, upon the recommendation of the Adjutant General of North Carolina and a board consisting of all active federally recognized general officers of the North Carolina national guard, to any member or former member of the armed forces who has distinguished or who shall distinguish himself by exceptionally meritorious conduct in the performance of outstanding service to the North Carolina national guard. (1955, c. 255, s. 2; 1963, c. 1016, s. 2.)

Editor's Note.—The 1963 amendment substituted “armed forces” for the words “North Carolina national guard” near the middle of the last sentence.

§ 127-38. Courts-martial for national guard.—Courts-martial for organizations of the national guard not in the service of the United States shall be of three kinds, namely, general courts-martial, special courts-martial, and summary courts-martial. They shall be constituted, have cognizance of the same subjects, and possess like powers, except as to punishments, as similar courts provided for by the law and regulations governing the armed forces of the United States, and the proceedings of courts-martial of the national guard shall follow the forms and modes of procedure prescribed for such similar courts. (1917, c. 200, s. 55; C. S., s. 6825; 1963, c. 1018, s. 1.)

Editor's Note.—The 1963 amendment substituted “armed forces” for “army” near the end of the section.

§ 127-39. General courts-martial.—General courts-martial of the national guard not in the service of the United States may be convened by orders of the Governor of the State, and such courts shall have the power to impose fines not exceeding two hundred dollars; sentence to forfeiture of pay and allowances; to a reprimand; to dismissal or dishonorable discharge from the service; to reduction of enlisted personnel to the ranks; or any two or more of such punishments may be combined in the sentences imposed by such courts. (1917, c. 200, s. 56; C. S., s. 6826; 1957, c. 136, s. 7; 1963, c. 1018, s. 2.)

Editor's Note.—The 1957 amendment increased the maximum amount of fines from two to four hundred dollars. Prior to the amendment this section provided for the convening of courts-martial by the President.

The 1963 amendment reduced the maximum amount of fines from four to two hundred dollars, and substituted the words “enlisted personnel” for “noncommissioned officers.”

§ 127-40. Special courts-martial.—In the national guard, not in the service of the United States, special courts-martial may be appointed by the following authorities:

- (1) For an infantry division, by the commanding officers of the regiments or comparable commands.

- (2) For division artillery, by the commander of division artillery.
- (3) For corps artillery, by the commander of corps artillery.
- (4) For all other units of an infantry division, by the commander of the infantry division.
- (5) For the air national guard, by the senior officer of the air national guard.
- (6) For all other units of the national guard, by the Governor of North Carolina.

Such courts-martial shall have the power and authority to try any person subject to military law for any crime or offenses within the jurisdiction of a general military court. A special court-martial may not try a commissioned officer. Such courts-martial shall have the same powers of punishment as general courts-martial except that fines imposed by such courts-martial shall not exceed one hundred dollars (\$100.00), and such courts-martial shall not have the power of dismissal from the national guard. (1917, c. 200, s. 57; C. S., s. 6827; 1957, c. 136, s. 8; 1963, c. 1018, s. 3.)

Editor's Note.—The 1957 amendment rewrote this section.

The 1963 amendment added at the end of subdivision (1) the words "or compar-

able commands." It also inserted the second sentence of the last paragraph and changed the maximum fine from two hundred to one hundred dollars.

§ 127-41. Summary courts-martial.—In the national guard, not in the service of the United States, summary courts-martial may be appointed by the commanding officer of any company, battery, detachment, squadron, or any other federally recognized unit, either army or air. Such court shall consist of one officer, who shall have the power to administer oaths and try enlisted men of each respective command for breaches of discipline and violations of laws governing such organizations. Such courts shall also have the power to impose fines not exceeding twenty-five dollars (\$25.00) for any single offense, may sentence to forfeiture of pay and allowances, or may sentence enlisted personnel to reduction in rank; but in the case of noncommissioned officers above the fourth enlisted grade, may not adjudge reduction except to the next inferior grade. (1917, c. 200, s. 58; C. S., s. 6828; 1957, c. 136, s. 9; 1963, c. 1018, s. 4.)

Editor's Note.—The 1957 amendment rewrote this section.

The 1963 amendment rewrote the last sentence.

§ 127-41.1. Jurisdiction of courts-martial.—The jurisdiction of courts-martial of the national guard, not in the service of the United States, except as to punishments, shall be as prescribed by the Manual for Courts-Martial, United States, 1951, as amended. Such courts-martial shall have jurisdiction to try accused persons for offenses committed while serving without the State and while going to and returning from such service without the State in like manner and to the same extent as while serving within the State. (1957, c. 136, s. 10.)

§ 127-41.2. Nonjudicial punishment.—Any commanding officer of the national guard, not in the service of the United States, may, in addition to or in lieu of admonition or reprimand, impose nonjudicial punishment in like manner and to the extent prescribed by article 15 of the Uniform Code of Military Justice, Manual for Courts-Martial, United States, 1951, as amended. (1957, c. 136, s. 10.)

§ 127-42. Powers of courts-martial.—All courts-martial of the national guard, not in the service of the United States, including summary courts, shall have power to sentence to confinement in lieu of fines authorized to be imposed: Provided, that such sentences of confinement shall not exceed one day for each one dollar (\$1.00) of fine authorized. (1917, c. 200, s. 59; C. S., s. 6829; 1949, c. 1130, s. 3; 1957, c. 136, s. 11; 1963, c. 1018, s. 5.)

Editor's Note.—The 1949 amendment deleted a provision relating to confinement in jail.

The 1957 amendment substituted "two

dollars" for "dollar."

The 1963 amendment changed "two dollars" to "one dollar (\$1.00)" near the end of the section.

§ 127-43. **Procedure of courts-martial.**—In the national guard, not in the service of the United States, presidents of courts-martial and summary court officers shall have power to issue warrants to arrest accused persons and to bring them before the court for trial whenever such persons shall have disobeyed an order in writing from the convening authority to appear before such court, a copy of the charge or charges having been delivered to the accused with such order, and to issue commitments in carrying out sentences of confinement, and to issue subpoenas and subpoenas duces tecum, and to enforce by attachment attendance of witnesses and the production of books and papers, and to sentence for a refusal to be sworn or to answer as provided in actions before civil courts. He shall also have power to punish for contempt occurring in the presence of the court.

In lieu of the provisions of the first paragraph of this section, imposition of restraint of persons subject to military law may be as prescribed by articles 9 and 10 of the Uniform Code of Military Justice, Manual for Courts-Martial, United States, 1951, as amended. (1917, c. 200, s. 60; C. S., s. 6830; 1957, c. 136, s. 12.)

Editor's Note.—The 1957 amendment added the second paragraph.

§ 127-43.1. **Forms for courts-martial procedure.**—In the national guard, not in the service of the United States, forms for courts-martial procedure shall be substantially as those set forth in the Appendices, Manual for Courts-Martial, United States, 1951, as amended. (1957, c. 136, s. 13.)

§ 127-44. **Manual for Courts-Martial.**—Trials and proceedings by all courts and boards shall be in accordance with the plans and procedures laid down in the Manual for Courts-Martial, United States, 1951, as amended. (1917, c. 200, s. 64; C. S., s. 6831; 1957, c. 136, s. 14.)

Editor's Note.—The 1957 amendment rewrote this section.

§ 127-45. **Sentences, where executed.**—All sentences to confinement imposed by any military court of this State shall be executed in such prisons as the court may designate. (1917, c. 200, s. 61; C. S., s. 6832.)

§ 127-46. **Execution of process and sentences.**—All processes and sentences of any of the military courts of this State shall be executed by any sheriff, deputy sheriff, constable, or police officer into whose hands the same may be placed for service or execution, and such officer shall make return thereof to the officer issuing or imposing the same. Such service or execution of process or sentence shall be made by such officer without tender or advancement of fee therefor; but all costs in such cases shall be paid from funds appropriated for military purposes. The actual necessary expenses of conveying a prisoner from one county in the State to another, when the same is authorized and directed by the Adjutant General of the State, shall be paid from the military fund of the State upon a warrant approved by the Adjutant General. (1917, c. 200, s. 62; C. S., s. 6833.)

§ 127-47. **Commitments.**—When any sentence to fine or imprisonment shall be imposed by any military court of this State, it shall be the duty of the president of said court, or summary court officer, upon the approval of the findings and sentence of such court, to make out and sign a certificate entitling the case, giving the name of the accused, the date and place of trial, the date of approval of sentence, the amount of fine, or manner, place, and duration of confinement, and deliver such certificate to the sheriff, or deputy sheriff, constable, or police officer of the county wherein the sentence is to be executed; and it shall thereupon be the duty of such officer to carry said sentence into execution in the manner prescribed by law for the collection of fines or commitment to service of terms of imprisonment in criminal cases determined in the courts of this State. (1917, c. 200, s. 63; C. S., s. 6834.)

§ 127-48. **Sentence of dismissal.**—No sentence of dismissal from the service or dishonorable discharge, imposed by a national guard court-martial not in the service of the United States, shall be executed until approved by the Governor. Any officer convicted by a general court-martial and dismissed from the service shall be forever disqualified from holding a commission in the militia. (1917, c. 200, s. 65; C. S., s. 6835.)

ARTICLE 4.

Naval Militia.

§ 127-49. **Organization and equipment.**—The organization of the naval militia shall be units of convenient size, in each of which the number and rank of officers and the distribution of the total enlisted strength among the several ratings of petty officers and other enlisted men shall be such as are prescribed by the Secretary of the Navy, who may also prescribe the number of officers and the number of petty officers and other enlisted men required for the organization of such units into larger bodies for administrative and other purposes, and the arms and equipment of the naval militia shall be those which are now or may hereafter be prescribed by the Secretary of the Navy. (1917, c. 200, s. 66; C. S., s. 6836.)

§ 127-50. **Officers appointed to naval militia.**—Officers of the United States navy and marine corps may, with the approval of the Secretary of the Navy, be elected or appointed and commissioned as officers of the naval militia. (1917, c. 200, s. 67; C. S., s. 6837.)

§ 127-51. **Officers assigned to duty.**—Line officers of the naval militia may be for line duties only, for engineering duties only, or for aeronautic duties only. (1917, c. 200, s. 68; C. S., s. 6838.)

§ 127-52. **Discipline in naval militia.**—The naval militia shall be subject to the system of discipline prescribed for the United States navy and marine corps, and the commanding officer of a naval militia battalion or brigade, or a naval militia officer in command of naval militia forces on shore or on any vessel of the navy loaned to the State, or on any vessel on which such forces are training, whether within or without the State, or wherever, either within or without the State, naval militia forces of the State shall be assembled pursuant to orders, shall have power without trial by courts-martial to impose upon members of the naval militia the punishments which the commanding officer of a vessel of the navy is authorized by law to impose. (1917, c. 200, s. 69; C. S., s. 6839.)

§ 127-53. **Disbursing and accounting officer.**—The Governor shall appoint a disbursing officer, approved by and of such rank as may be prescribed by the Secretary of the Navy, to perform such duties as the Secretary of the Navy may prescribe. The Governor shall also appoint the above described disbursing officer, or such other officer of the pay corps of the naval militia as he may elect, as accounting officer for each battalion thereof, or at his option for each larger unit or combination of units of the same, who shall be responsible for the proper accounting for all public property issued to and for the use of such battalion or larger unit or combination of units. (1917, c. 200, s. 70; C. S., s. 6840.)

§ 127-54. **Rendition of accounts.**—Accounting officers shall render accounts as prescribed by the Governor or by the Secretary of the Navy, and shall be required to give good and sufficient bond to the State and to the United States, in such sums as the Governor or the Secretary of the Navy may direct, and conditioned upon the faithful accounting for all public property and for the safekeeping of such part thereof as may be in the personal custody of such officer. Accounting officers may issue any or all such property to other officers or enlisted men of the naval militia under such rules and regulations as may be prescribed. (1917, c. 200, s. 71; C. S., s. 6841.)

§ 127-55. **Disbandment of naval militia.**—No part of the naval militia which is entitled to compensation under the provisions of an act of Congress approved August twenty-ninth, one thousand nine hundred and sixteen, shall be disbanded without the consent of the President. (1917, c. 200, s. 86; C. S., s. 6842.)

§ 127-56. **Courts-martial for naval militia.**—Courts-martial in the naval militia shall consist of general courts-martial, summary courts-martial, and deck courts. (1917, c. 200, s. 72; C. S., s. 6843.)

§ 127-57. **General courts-martial.**—General courts-martial shall consist of not less than three nor more than thirteen officers, and may be convened by order of the Governor. (1917, c. 200, s. 73; C. S., s. 6844.)

§ 127-58. **Summary courts-martial.**—Summary courts-martial may be ordered by the Governor, or by the commanding officers of a naval militia battalion or brigade. (1917, c. 200, s. 74; C. S., s. 6845.)

§ 127-59. **Deck courts.**—Deck courts may be ordered by the commanding officer of a naval militia battalion or brigade, or by a naval militia officer in command of naval militia forces on shore or on any vessel loaned to the State or on any vessel on which said forces may be serving. (1917, c. 209, s. 75; C. S., s. 6846.)

§ 127-60. **Jurisdiction and procedure of courts-martial and deck courts.**—The above courts-martial and deck courts herein provided for shall be constituted and have cognizance of the same subjects, and possess like powers, except as to punishments, as similar courts-martial provided for in the navy of the United States; and the proceedings of the courts-martial of the naval militia shall follow the forms and modes of procedure prescribed for such courts in the navy of the United States. (1917, c. 200, s. 76; C. S., s. 6847.)

§ 127-61. **Place of holding courts.**—Every precept or order for the convening of any such court may authorize the court to sit at any place or places within the territorial limits of the State as the convening authority may designate, and may further provide that any such court may be convened and sit on board any such naval or other vessel, wherever the same from time to time happens to be, or at such place or places ashore, outside the territorial limits referred to above, as in the judgment of the said convening authority may be convenient or desirable for the purposes of such courts-martial. (1917, c. 200, s. 77; C. S., s. 6848.)

§ 127-62. **Powers of general courts-martial.**—General courts-martial shall have power to impose fines not exceeding two hundred dollars, to sentence to forfeiture of pay and allowances, to a reprimand, to dismissal or dishonorable discharge from the service, to reduction in rank or rating; or any two or more of such punishments may be combined in the sentences imposed by such courts. (1917, c. 200, s. 78; C. S., s. 6849.)

§ 127-63. **Powers of summary courts-martial.**—Summary courts-martial shall have the same powers of punishment as general courts-martial, except that fines imposed by summary courts-martial shall not exceed one hundred dollars. (1917, c. 200, s. 79; C. S., s. 6850.)

§ 127-64. **Powers of deck courts.**—Deck courts may impose fines not exceeding fifty dollars for any single offense; may sentence enlisted men to reduction in rank or rating, to forfeiture of pay and allowances, to a reprimand, to discharge with other than dishonorable discharge, or a fine in addition to any one of the other sentences specified. (1917, c. 200, s. 80; C. S., s. 6851.)

§ 127-65. **Process of courts-martial.**—Presidents of general courts-martial, senior members of summary courts-martial, and deck court officers of the naval militia shall have the power to issue warrants to arrest accused persons, and to

bring them before the court for trial whenever such persons have disobeyed an order in writing from the convening authority to appear before such court, a copy of the charge or charges having been delivered to the accused with such order, and to issue commitments in carrying out sentences of confinement, and to issue subpoenas and subpoenas duces tecum, and to enforce by attachment attendance of witnesses and the production of books and papers, and to sentence for a refusal to be sworn or to answer, all as authorized for similar proceedings for courts-martial in the navy of the United States. He shall also have power to punish for contempt occurring in the presence of the court. All processes, warrants, and sentences of such courts shall be executed by any sheriff or deputy sheriff or any constable or police officer of any township, county, city, or town, who shall be authorized by law to execute or serve any civil or criminal process. (1917, c. 200, s. 83; C. S., s. 6852.)

§ 127-66. Sentence to confinement in lieu of fines.—All courts-martial of the naval militia, including deck courts, shall have the power to sentence to confinement in lieu of fines authorized to be imposed, and shall have the power to direct that upon nonpayment of a fine the person convicted shall be confined in any county jail; but such sentences to confinement shall not exceed one day for each dollar of fine authorized. When naval militia forces are embarked on any vessel, the confinement in whole or in part may be had in prisons provided on said ship. (1917, c. 200, s. 81; C. S., s. 6853.)

§ 127-67. Dismissal or dishonorable discharge.—No sentence of dismissal or dishonorable discharge from the naval militia shall, except when the naval militia shall have been called into the service of the United States, be executed without the approval of the Governor. (1917, c. 200, s. 82; C. S., s. 6854.)

§ 127-68. Collection of fines.—The amount of any fine imposed under sentence of the courts heretofore named on any member of the naval militia may be collected from him, or may be deducted from any amount due said member as accrued pay. (1917, c. 200, s. 84; C. S., s. 6855.)

§ 127-69. Courts of inquiry.—Courts of inquiry in the naval militia shall be instituted, constituted, and conducted in the same manner and shall have like powers and duties as similar courts in the navy of the United States, except that they shall be ordered by the Governor. (1917, c. 200, s. 85; C. S., s. 6856.)

ARTICLE 5.

Regulations as to Active Service.

§ 127-70. National guard and naval militia first ordered out.—In all cases the national guard and naval militia as provided for in this chapter shall be first ordered into service. (1917, c. 200, s. 44; C. S., s. 6857.)

§ 127-71. Regulations enforced on actual service.—Whenever any portion of the militia shall be called into service to execute the law, suppress riot or insurrection, or to repel invasion, the provisions of the Uniform Code of Military Justice of the United States, governing the armed forces of the United States, and the regulations prescribed for the armed forces of the United States, and the regulations issued thereunder, shall be enforced and regarded as a part of this chapter until said forces shall be duly relieved from such duty. As to offenses committed when such provisions of the Uniform Code of Military Justice of the United States are so in force, courts-martial shall possess, in addition to the jurisdiction and power of sentence and punishment herein vested in them, all additional jurisdiction and power of sentence and punishment exercisable by like courts under such provisions of the Uniform Code of Military Justice of the United States or regulations or laws governing the United States armed forces or the customs and usages thereof; but no punishment under such Code which will extend to the taking of life shall in any case

be inflicted except in time of war, invasion, or insurrection, declared by a proclamation of the Governor to exist, and then only after approval by the Governor of the sentence inflicting such punishment. Imprisonment other than in guardhouse shall be executed in county jails or other prisons designated by the Governor for that purpose. (1917, c. 200, s. 45; C. S., s. 6858; 1963, c. 1018, s. 6.)

Editor's Note.—The 1963 amendment substituted “provisions of the Uniform Code of Military Justice of the United States” in lieu of “articles of war and articles for the government of the navy” in three places.

It also substituted “armed forces” for “army and navy” in three places and substituted “Code” for “rules and articles” in the second sentence.

§ 127-72. Regulations governing unorganized militia.—Whenever any part of the unorganized militia is ordered out, it shall be governed by the same rules and regulations and be subject to the same penalties as the national guard or naval militia. (1917, c. 200, s. 35; C. S., s. 6859.)

ARTICLE 6.

Unorganized Militia.

§ 127-73. Unorganized militia ordered out for service.—The commander-in-chief may at any time, in order to execute the law, suppress riots or insurrections, or repel invasions, in addition to the national guard, the State defense militia, and the naval militia, order out the whole or any part of the unorganized militia. When the militia of this State or a part thereof is called forth under the Constitution and laws of the United States, the Governor shall first order out for service the national guard, the State defense militia or naval militia, or such part thereof as may be necessary, and if the number available be insufficient, he shall then order out such a part of the unorganized militia as he may deem necessary. During the absence of organizations of the national guard or naval militia in the service of the United States, their State designations shall not be given to new organizations. (1917, c. 200, s. 46; C. S., s. 6860; 1963, c. 1016, s. 2.)

Editor's Note.—The 1963 amendment substituted the words “State defense militia” for “national guard reserve” in the first

sentence, and inserted the words “the State defense militia” in the second sentence.

§ 127-74. Manner of ordering out unorganized militia.—The Governor shall, when ordering out the unorganized militia, designate the number. He may order them out either by calling for volunteers or by draft. He may attach them to the several organizations of the national guard, the State defense militia or naval militia, as may be best for the service. (1917, c. 200, s. 47; C. S., s. 6861; 1963, c. 1016, s. 2.)

Editor's Note.—The 1963 amendment inserted the words “the State defense militia”

and made other changes in the second sentence.

§ 127-75. Draft of unorganized militia.—If the unorganized militia is ordered out by draft, the Governor shall designate the persons in each county to make the draft, and prescribe rules and regulations for conducting the same. (1917, c. 200, s. 48; C. S., s. 6862.)

§ 127-76. Punishment for failure to appear.—Every member of the militia ordered out for duty, or who shall volunteer or be drafted, who does not appear at the time and place ordered, shall be liable to such punishment as a court-martial may determine. (1917, c. 200, s. 49; C. S., s. 6863.)

§ 127-77. Promotion of marksmanship.—The Adjutant General is authorized to detail a commissioned officer of the North Carolina national guard or member of the State defense militia to promote rifle marksmanship among the State defense militia and the unorganized militia of the State. Such officer or member so detailed shall serve without pay and it shall be his duty to organize and supervise rifle clubs

in schools, colleges, universities, clubs and other groups, under such rules and regulations as the Adjutant General shall prescribe and in such manner to make them, when duly organized, acceptable for membership in the National Rifle Association. Provided, that such duties and efforts shall in nowise interfere or conflict with clubs of schools or in nowise interfere or conflict with clubs of schools or units operating in R. O. T. C. or similar schools under the supervision of armed forces instructors.

The Adjutant General may reimburse the officer, or member of the State defense militia, so detailed to promote rifle marksmanship, as aforesaid, for such expenses actually incurred, not to exceed the amount appropriated for such purpose by the General Assembly. (1937, c. 449; 1963, c. 1016, s. 2.)

Editor's Note.—The 1963 amendment inserted the references to "the State defense militia" in the first sentence, deleted the words "of the unorganized militia" near the beginning of the second sentence, and sub-

stituted "armed forces" for "army" near the end of the first paragraph, and "State defense militia" for "unorganized militia" in the second paragraph.

ARTICLE 7.

Pay of Militia.

§ 127-78. **Rations and pay on service.**—The militia of the State, both officers and enlisted men, when called into the service of the State, shall receive the same pay as when called or ordered into the service of the United States, and shall be rationed or paid the equivalent thereof. (1813, c. 850, s. 5, P. R.; R. C., c. 70, s. 84; Code, s. 3248; Rev., s. 4856; 1907, c. 316; 1917, c. 200, s. 50; C. S., s. 6864; 1935, c. 452; 1959, c. 218, s. 17.)

Cross Reference.—As to national guardsmen coming within the Workmen's Compensation Act when on duty, see note to § 127-102.

Editor's Note.—The 1935 amendment increased the amount of daily pay.

The 1959 amendment rewrote this section.

§ 127-79. **Rate of pay for service.**—The Governor may, whenever the public service requires it, order upon special or regular duty any officer or enlisted man of the national guard or naval militia, and the expenses and compensation therefor of such officer and enlisted man shall be paid out of the appropriations made to the Adjutant General's Department. Such officer and enlisted man shall receive the same pay as officers and enlisted men of the same grade and like service of the regular service; but officers when on duty in connection with examining boards, efficiency boards, advisory boards, and courts of inquiry shall be allowed per diem and subsistence prescribed for lawful State boards and commissions generally for such duty. Officers serving on general or special courts-martial shall receive the base pay of their rank. No staff officer who receives a salary from the State as such shall be entitled to any additional compensation other than actual and necessary expenses incurred while traveling upon orders issued by the proper authority. (1917, c. 200, s. 51; C. S., s. 6865; 1935, c. 451; 1949, c. 1130, s. 4; 1959, c. 218, s. 18; 1963, c. 1019, s. 1.)

Editor's Note.—The 1935 amendment inserted the next to the last sentence and the 1949 amendment increased the per diem from "four" to "six" dollars.

The 1959 amendment deleted from the second sentence "actual expenses and six dollars (\$6.00) per diem," and inserted in

lieu thereof "per diem and subsistence prescribed for lawful State boards and commissions generally."

The 1963 amendment substituted the word "service" for the words "army and navy" in the second sentence.

§ 127-80. **Paid by the State.**—When the militia or any portion thereof shall be called into service to execute the law, suppress riots or insurrections, and to repel invasions, the pay, subsistence, transportation, and other necessary expenses incident

thereto shall be paid by the State Treasurer, upon the approval of the Governor and warrant of the auditor. (1917, c. 200, s. 52; C. S., s. 6866.)

Editor's Note.—In *Worth v. Commissioners*, 118 N. C. 112, 24 S. E. 778 (1896) it was held in construing the prior law that the State should pay the cost of the militia when it is called out by the Governor to aid a sheriff in executing a writ of possession. And in *Commissioners v. Commis-*

sioners, 75 N. C. 240 (1876) it was said that a county could not recover back money voluntarily paid for the upkeep of the militia while in its service, although there was no debt and the county could not have been forced to pay.

§ 127-81. Pay of general and field officers.—General and field officers when away from their home stations visiting the organizations of their commands, for inspection and instruction under orders from proper authority, shall receive actual necessary expenses and the pay of their rank. (1917, c. 200, s. 53; C. S., s. 6867.)

§ 127-82. Pay and care of soldiers injured in service.—A member of the national guard and militia who shall, when on duty or assembled therefor in case of riot, tumult, breach of peace, insurrection, or invasion, or to repel invasion or in aid of the civil authorities, receive any injury, or incur or contract any disease or illness, or disability as a result of disease or illness, by reason of such duty or assembly therefor, which shall temporarily incapacitate him from pursuing his usual business or occupation, shall during the period of such incapacity receive the actual necessary expenses for care and medicine and medical attendance, and the pay of his grade or rank, to be paid out of the contingency and emergency fund, or such other fund as may be designated by law. (1917, c. 200, s. 54; C. S., s. 6868; 1959, c. 218, s. 19; c. 763.)

Editor's Note.—The 1959 amendments rewrote this section.

ARTICLE 8.

Privilege of Organized Militia.

§ 127-83. Leaves of absence for State officers and employees.—All officers and employees of the State, including superintendents, principals, and teachers in the public schools of the State, who shall be members of the national guard, naval militia, officers reserve corps, enlisted reserve corps, or the naval reserves shall be entitled to leaves of absence from their respective duties, without loss of pay, time, or efficiency rating, on all days during which they shall be engaged in field or coast-defense training ordered or authorized under the provisions of this chapter or as may be directed by the President of the United States. (1917, c. 200, s. 88; C. S., s. 6869; 1937, c. 224, s. 1; 1949, c. 1274.)

Editor's Note.—The 1937 amendment made this section applicable to the officers reserve corps, the enlisted reserve corps and the naval reserves. And the 1949 amend-

ment inserted the words "including superintendents, principals, and teachers in the public schools of the State."

§ 127-84. Contributing members.—Each organization of the national guard and naval militia may, besides its regular and active members, enroll twenty-five contributing members on payment in advance by each person desiring to become such contributing member of not less than ten dollars per annum, which money shall be paid into the company treasury. Each contributing member shall be entitled to receive from the commanding officer thereof a certificate of membership, which certificate shall exempt the holder from jury duty. (1917, c. 200, s. 90; C. S., s. 6871.)

Cross Reference.—As to section not being applicable to personnel and units of State defense militia, see § 127-111, subsection (f).

§ 127-85. Organizations may own property; actions.—Organizations of the national guard and naval militia shall have the right to own and keep real and

personal property, which shall belong to and be under the control of the members of the organization; and the commanding officer of any organization may recover for its use debts or effects belonging to it, or damages for injury to such property, action for such recovery to be brought in the name of the commanding officer thereof before any court of justice within the State having jurisdiction; and no suit or complaint pending in his name shall be abated by his ceasing to be commanding officer of the organization; but upon motion of the commander succeeding him such commander shall be admitted to prosecute the suit or complaint in like manner and with like effect as if it had been originally commenced by him. (1917, c. 200, s. 92; C. S., s. 6872.)

Cross Reference.—As to section not being applicable to personnel and units of State defense militia, see § 127-111, subsection (f).

§ 127-86. When families of soldiers supported by county.—When any citizen of the State is absent on duty as a member of the national guard, State defense militia or naval militia, and his family are unable to support themselves during his absence, the board of commissioners of his county, on application, shall make towards their maintenance such allowance as may be deemed reasonable. (1917, c. 200, s. 93; C. S., s. 6873; 1963, c. 1019, s. 2.)

Editor's Note.—The 1963 amendment inserted the words "State defense militia."

ARTICLE 9.

Care of Military Property.

§ 127-87. Custody of military property.—All public military property, except when used in the performance of military duty, shall be kept in armories, or other properly designated places of deposit; and it shall be unlawful for any person charged with the care and safety of said public property to allow the same out of his custody, except as above specified. (1917, c. 200, s. 38; C. S., s. 6874.)

§ 127-88. Property stored in warehouse.—All public military property of every description which may not be distributed among the units of the national guard or State defense militia according to law shall be stored and kept in the United States Property and Fiscal Officer for North Carolina Warehouse. (1917, c. 200, s. 39; C. S., s. 6875; 1959, c. 218, s. 20; 1963, s. 3.)

Editor's Note.—The 1959 amendment re-wrote this section. The 1963 amendment inserted the words "or State defense militia."

§ 127-89: Repealed by Session Laws 1959, c. 218, s. 21.

§ 127-90. Property kept in good order.—Every officer and enlisted man belonging to any unit equipped with public military property shall keep and preserve such property in good order; and for neglect to do so may be punished as a court-martial may direct. (1917, c. 200, s. 40; C. S., s. 6877; 1959, c. 218, s. 22.)

Editor's Note.—The 1959 amendment re-wrote this section.

§ 127-91. Equipment and vehicles.—Equipment and vehicles issued by the Department of Defense to the national guard or State defense militia shall be used solely for military purposes, except in those specific cases where nonmilitary use is authorized by the Department of Defense and/or the Governor. Necessary expense in maintaining such equipment and vehicles, not provided for by the federal government shall be a proper charge against funds appropriated for the national guard: Provided such expense shall be specifically authorized by the Governor and certified by the Adjutant General. (1917, c. 200, s. 41; C. S., s. 6878; 1921, c. 120, s. 9; 1959, c. 218, s. 23; 1963, c. 1019, s. 4.)

Editor's Note.—The 1959 amendment re-wrote this section. The 1963 amendment inserted the words "or State defense militia."

§ 127-92. **Transfer of property.**—All officers accountable or responsible for public funds, property, or books, before being relieved from the duty shall turn over the same according to the regulations prescribed by the Governor. (1917, c. 200, s. 42; C. S., s. 6879.)

§ 127-93. **Replacement of lost or damaged property.**—Whenever any military property issued to the national guard or State defense militia of the State shall have been lost, damaged, or destroyed, and upon report of a disinterested surveying officer it shall appear that the loss, damage, or destruction of property was due to carelessness or neglect, or that its loss, damage or destruction could have been avoided by exercise of reasonable care, the money value of such property shall be charged to the responsible officer or enlisted man, and the pay of such officers and enlisted men from both federal and State funds at any time accruing may be stopped and applied to the payment of any such indebtedness until same is discharged. (1917, c. 200, s. 43; C. S., s. 6880; 1959, c. 218, s. 24; 1963, c. 1019, s. 5.)

Editor's Note.—The 1959 amendment substituted "national guard" for "militia" near the beginning of the section, omitted a provision as to liability on bond for lost, damaged or destroyed property, and made

other changes.

The 1963 amendment inserted "or State defense militia" near the beginning of the section.

§ 127-94. **Injuring military property.**—If any person shall wantonly or willfully injure or destroy any arms, equipment, or other military property of the State or the United States and refuse to make good such injury or loss, or shall sell, dispose of, secrete, or remove the same with intent to sell or dispose thereof, he shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six months, or both. (1876-7, c. 272, s. 19; Code, s. 3274; Rev., s. 3536; C. S., s. 6881; 1959, c. 218, s. 25.)

Editor's Note.—The 1959 amendment inserted "or the United States" near the middle of the section and increased the

maximum fine from one hundred to five hundred dollars.

§ 127-95. **Member of national guard or militia failing to return property.**—If any member of the North Carolina national guard or State defense militia shall willfully fail to return any property of the State or the United States to the armory or other place of deposit, when notified by competent authority so to do, he shall be guilty of a misdemeanor and fined not exceeding fifty dollars, or imprisoned not exceeding thirty days. (Rev., s. 3537; C. S., s. 6882; 1963, c. 1019, s. 6.)

Editor's Note.—The 1963 amendment inserted "or State defense militia" near the beginning of the section.

§ 127-96. **Selling accouterments.**—If any person shall sell, dispose of, pawn or pledge, destroy or injure, or willfully retain after demand made, any public property issued for the purpose of arming or equipping the national guard or militia of the State, he shall be guilty of a misdemeanor. (Code, s. 3274; 1893, c. 374, s. 30; Rev., s. 3541; C. S., s. 6883.)

§ 127-97. **Selling or embezzling arms or equipment.**—If any person to whom shall be confided public arms and/or equipment shall sell, or in any manner embezzle the same, or any part thereof, or if any person shall purchase any of them, knowing them to be such, the person so offending shall be guilty of a misdemeanor. (1831, c. 45, s. 5; R. C., c. 89, s. 8; Code, s. 3556; Rev., s. 3542; C. S., s. 6884; 1959, c. 218, s. 26.)

Editor's Note.—The 1959 amendment substituted "and/or equipment" for "or accouterments."

§ 127-98. **Refusing to deliver military property on demand.**—Every officer and enlisted man of the national guard or State defense militia, whenever and

wherever he shall see or learn that any of the military property issued to the national guard or State defense militia is in the possession of any person other than in whose hands they may be placed for safekeeping, under the provisions of the law, shall make immediate demand for the same personally or in writing; and should such person refuse to deliver them to the officer and/or enlisted man he shall be guilty in like manner, and punished in like manner as for selling or embezzling military property. (1831, c. 45, s. 7; R. C., c. 89, s. 10; Code, s. 3558; Rev., s. 3540; C. S., s. 6885; 1959, c. 218, s. 27; 1963, c. 1019, s. 7.)

Editor's Note.—The 1959 amendment re-wrote this section. defense militia" twice near the beginning of this section.

The 1963 amendment inserted "or State

§ 127-99: Repealed by Session Laws 1959, c. 218, s. 28.

ARTICLE 10.

Support of Militia.

§ 127-100. **Requisition for federal funds.**—The Governor shall make requisition upon the secretary of the appropriate service for such State allotment from federal funds as may be necessary for the support of the militia. (1917, c. 200, s. 23; C. S., s. 6887; 1921, c. 120, s. 10; 1963, c. 1019, s. 8.)

Editor's Note.—The 1963 amendment substituted "secretary of the appropriate service" for "Secretary of War."

§ 127-101. **County appropriations.**—The county commissioners may appropriate such sums of money to the various organizations of the national guard, State defense militia or naval militia in their counties and at such times as the board may deem proper. (1917, c. 200, s. 91; C. S., s. 6888; 1963, c. 1019, s. 9.)

Editor's Note.—The 1963 amendment inserted the words "State defense militia."

§ 127-102. **Allowances made to different organizations and personnel.**—(a) There shall be allowed each year to the following officers, under rules and regulations prescribed by the Adjutant General, as follows: To general officers, and commanders of divisions, corps, groups, brigades, regiments, separate battalions, squadrons, or similar organizations, not to exceed two hundred and twenty-five dollars (\$225.00); to commanding officers of companies, batteries, troops, detachments, and similar units not to exceed two hundred dollars (\$200.00); to executive officers, adjutants, plans and training officers, logistical officers and commissioned officers in comparable assignments in division, corps, groups, brigades, regiments, battalions, squadrons, and similar organizations, not to exceed two hundred dollars (\$200.00). No officer shall be entitled to receive any part of the amounts named herein unless he has performed satisfactorily all duties required of him by law and regulations and has pursued such course of instruction as may from time to time be required.

(b) There shall be allowed annually to each company, battery, troop, detachment and similar organizations federally recognized under regulations prescribed by the Defense Department in its tables of organization for the national guard, not to exceed the sum of three thousand dollars (\$3,000.00), to be applied to the payment of armory rent, heat, lights, stationery, postage, printing and other necessary expenses of the organization, in accordance with rules and regulations prescribed by the Adjutant General.

(c) There shall be allowed annually to the supply sergeant of each company, battery, troop, detachment, and similar organizations, the sum of one hundred dollars (\$100.00).

(d) All payments are to be made by the duly appointed budget officer in semi-annual installments on the first day of July and the first day of January of each year; but no payment shall be made unless all training required by law and regulations are

duly performed by all organizations named. No officer shall be entitled to receive any part of the amounts named herein unless he has performed satisfactorily all duties required of him by law and regulations and has pursued such course of instruction as may from time to time be required.

(e) The commanding officer of all organizations participating in the appropriations herein made shall render an itemized statement of all funds received from any source whatever for the support of their respective organizations in such manner and on such forms as may be prescribed by the Adjutant General. Failure on the part of any officer to submit promptly when due the financial statement of his organization will be sufficient cause to withhold all appropriations for such organizations.

(f) There shall be allowed annually to each of the following federally recognized commands of the national guard not to exceed the sum of: One thousand dollars (\$1,000.00) to headquarters of division or comparable commands; six hundred dollars (\$600.00) to headquarters of corps, groups, brigades, or comparable commands; and four hundred dollars (\$400.00) to battalions, squadrons and similar organizations. This amount is to be applied to the payment of necessary administrative expenses of the headquarters in accordance with rules and regulations prescribed by the Adjutant General. (1917, c. 200, s. 97; 1919, c. 311; C. S., s. 6889; 1921, c. 120, s. 11; 1923, c. 24; 1924, c. 6; 1927, c. 227, s. 2; 1949, c. 1130, s. 5; 1951, c. 1144, s. 1; 1953, c. 1246; 1959, c. 421; 1963, c. 1020.)

Cross Reference.—As to section not being applicable to personnel and units of State defense militia, see § 127-111, subsection (f).

Editor's Note.—The 1949 amendment rewrote the former first paragraph, and substituted \$1500.00 for \$600.00 in the former second paragraph. The 1951 amendment added the former last paragraph.

The 1953 amendment struck out of the former last paragraph "30th Infantry Divisions" and inserted in lieu thereof "commanding officers, infantry battalions; commanding general, 30th Infantry Division (in part)."

The 1959 amendment substituted "Defense" for "War" in subsection (b) and increased the amount named therein from

\$1,500.00 to \$3,000.00.

The 1963 amendment, effective July 1, 1963, rewrote this section.

Enlisted Man within Workmen's Compensation Act.—By this and § 127-78 the State has provided for payment in a certain manner to privates who have enlisted in the North Carolina national guard, and a private therein who has taken the prescribed oath is an employee of the State within the meaning of the Workmen's Compensation Act, and where he has sustained an injury arising out of and in the course of the performance of his duties as an enlisted man he is entitled to the compensation prescribed by the statute. *Baker v. State*, 200 N. C. 232, 156 S. E. 917 (1931).

ARTICLE 11.

General Provisions.

§ 127-103. Reports of officers.—All officers of the national guard, the State defense militia, and the naval militia shall make such returns and reports to the Governor, Secretary of Defense, or to such officers as they may designate, at such times and in such forms as may from time to time be prescribed. (1917, c. 200, s. 21; C. S., s. 6890; 1963, c. 1019, s. 10.)

Editor's Note.—The 1963 amendment inserted the words "the State defense militia" and substituted "Secretary of Defense" in

lieu of "Secretary of War, Secretary of the Navy."

§ 127-104. Officer to give notice of absence.—When any officer shall have occasion to be absent from his usual residence one week or more, he shall notify the officer next in command, and also his next superior officer in command, of his intended absence, and shall arrange for the officer next in command to handle and attend to all official communications. (1917, c. 200, s. 22; C. S., s. 6891.)

§ 127-105. Orders, rules, regulations and Uniform Code of Military Justice applicable to militia when not in service of United States.—The national guard,

State defense militia and naval militia, when not in the service of the United States, shall, except as to punishments, be governed by the orders, rules and regulations of the Adjutant General, regulations promulgated by the secretary of the appropriate service of the armed forces of the United States, and the Uniform Code of Military Justice, as amended from time to time. (1917, c. 200, s. 34; C. S., s. 6892; 1963, c. 1018, s. 7.)

Editor's Note.—The 1963 amendment rewrote this section.

§ 127-106. Commanding officer may prevent trespass and disorder.—The commanding officer upon any occasion of duty may place in arrest during the continuance thereof any person who shall trespass upon the camp ground, parade ground, armory, or other place devoted to such duty, or who shall in any way or manner interrupt or molest the orderly discharge of duty by those under arms, or shall disturb or prevent the passage of troops going to or returning from any duty. He may prohibit and prevent the sale or use of all spirituous liquors, wine, ale, beer, or cider, the holding of huckster or auction sales, and all gambling within the limits of the post, camp ground, place of encampment, parade, or drill under his command, or within such limits not exceeding one mile therefrom as he may prescribe. And he may in his discretion abate as common nuisance all such sales. (1917, c. 200, s. 94; C. S., s. 6893.)

§ 127-106.1. Power of arrest in certain emergencies.—In the event members of the North Carolina national guard or State defense militia are called out by the Governor pursuant to the authority vested in him by the Constitution, they shall have such power of arrest as may be reasonably necessary to accomplish the purpose for which they have been called out. (1959, c. 453; 1963, c. 1019, s. 11.)

Editor's Note.—The 1963 amendment inserted the words "or State defense militia." Quoted in *Harriet Cotton Mills v. Local*

Union No. 578, 251 N. C. 218, 111 S. E. (2d) 457 (1959).

§ 127-107. Organizing company without authority.—If any person shall organize a military company, or drill or parade under arms as a military body, except under the militia laws and regulations of the State, or shall exercise or attempt to exercise the power or authority of a military officer in this State, without holding a commission from the Governor, he shall be guilty of a misdemeanor. (1893, c. 374, s. 38; Rev., s. 3538; C. S., s. 6894.)

§ 127-108. Placing name on muster roll wrongfully.—If any officer of the militia of the State shall knowingly or willfully place, or cause to be placed, on any muster roll the name of any person not regularly or lawfully enlisted, or the name of any enlisted man who is dead or who has been discharged, transferred, or has lost membership for any cause whatsoever, or who has been convicted of any infamous crime, he shall be guilty of a misdemeanor. (1893, c. 374, s. 33; Rev., s. 3539; C. S., s. 6895.)

§ 127-109. Protection of the uniform.—It shall be unlawful for any person not an officer or enlisted man in the armed forces of the United States to wear the duly prescribed uniform of the armed forces of the United States, or any distinctive part of such uniform, or a uniform any part of which is similar to a distinctive part of the duly prescribed uniform of the armed forces of the United States; provided, that the foregoing provisions shall not be construed so as to prevent officers or enlisted men of the national guard or State defense militia from wearing, in pursuance of law and regulations, the uniform lawfully prescribed to be worn by such officers or enlisted men; nor to prevent members of the organization known as the Boy Scouts of America, or the naval militia, or such other organizations as the Secretary of Defense may designate, from wearing their prescribed uniforms; nor

to prevent persons who in time of war have served honorably as officers of the armed forces of the United States, regular or volunteer, and whose most recent service was terminated by an honorable discharge, mustered out, or resignation, from wearing, upon occasions of ceremony, the uniform of the highest grade they have held by brevet or other commission in such regular or volunteer service; nor to prevent any person who has been honorably discharged from the armed forces of the United States, regular or volunteer, from wearing his uniform from the place of his discharge to his home within three (3) months after his discharge; nor to prevent the members of military societies composed entirely of honorably discharged officers and enlisted men, or both, of the armed forces of the United States, regular or volunteer, from wearing, upon occasions of ceremony, the uniform duly prescribed by such societies to be worn by members thereof; nor to prevent the instructors and members of the duly organized cadet corps of a State university, State college, or public high school offering a regular course in military instruction from wearing the uniform duly prescribed by the authorities of such university, college, or public high school for wear by the instructors and members of such cadet corps; nor to prevent the instructors and members of a duly organized cadet corps of any other institution of learning offering a regular course in military instruction, and at which an officer or enlisted man of the armed forces of the United States is lawfully detailed for duty as instructor in military science and tactics, from wearing the uniform duly prescribed by the authorities of such institution of learning for wear by the instructors and members of such cadet corps; nor to prevent civilians attendant upon a course of military or naval instruction authorized and conducted by the military or naval authorities of the United States from wearing, while in attendance upon such course of instruction, the uniform authorized and prescribed by such military or naval authorities for wear during such course of instruction; nor to prevent any person from wearing the uniform of the armed forces of the United States in any playhouse or theater, or in moving-picture films while actually engaged in representing therein a military or naval character not tending to bring discredit or reproach upon the armed forces of the United States: Provided further that the uniform worn by officers or enlisted men of the national guard, or State defense militia, or by the members of the military societies, or the instructors and members of the cadet corps referred to in the preceding proviso, shall include some distinctive mark or insignia to be prescribed by the Secretary of Defense to distinguish such uniforms from the uniforms of the armed forces of the United States; and provided further, that the members of the military societies and the instructors and members of the cadet corps hereinbefore mentioned shall not wear the insignia of rank prescribed to be worn by the officers of the armed forces of the United States, or any insignia of rank similar thereto. Any person who offends against the provisions of this section, shall on conviction be punished by a fine not exceeding fifty dollars (\$50.00), or by imprisonment not exceeding thirty (30) days, or by both such fine and imprisonment. (1921, c. 120, s. 12; C. S., s. 6895(a); 1963, c. 1017.)

Editor's Note.—The 1963 amendment substituted "armed forces of the United States" for "United States army, navy or marine corps" throughout this section and inserted

"or State defense militia" at two places in the section. It also substituted "Secretary of Defense" for "Secretary of War" at two places in this section.

§ 127-110. Upkeep of camps.—There shall be paid from the appropriations from the national guard such amounts as may be necessary for the maintenance, upkeep, and improvement of the State camp or camps: Provided, such expenditures shall be approved and authorized by the Governor. (1921, c. 120, s. 13; C. S., s. 6895(b).)

§ 127-110.1. When officers authorized to administer oaths.—Officers of the national guard are authorized to administer oaths in all circumstances pertaining to any military matter whenever an oath is required. (1949, c. 1130, s. 6.)

ARTICLE 12.

State Defense Militia.

§ 127-111. Authority to organize and maintain state defense militia of North Carolina.—(a) The Governor is authorized, subject to such regulations as the Secretary of Defense may prescribe, to organize such part of the unorganized militia as a State force, for discipline and training, into companies, battalions, regiments, brigades or similar organizations, as may be deemed necessary for the defense of the State; to maintain, uniform, and equip such military force within the appropriation available; to exercise discipline in the same manner as is now or may be hereafter provided by the State laws for the national guard; to train such force in accordance with training regulations issued by the Secretary of Defense. Such military force shall be subject to the call or order of the Governor to execute the law, suppress riots or insurrections, or to repel invasion, as may now or hereafter be provided by law for the national guard or for the State militia.

(b) Such military force shall be designated as the “North Carolina State defense militia” and shall be composed of personnel of the unorganized militia as may volunteer for service therein or drafted as provided by law. To be eligible for service in an enlisted status, a person must be at least seventeen years of age and under fifty years of age, or under sixty-four years of age and a former member of the armed forces of the United States. To be eligible for service as an officer, a male must be at least eighteen years of age and under sixty-four, and a female at least twenty-one years of age and under sixty-four. The force and its personnel shall be additional to and distinct from the national guard organized under existing law. A person may not become a member of the defense militia established under this section, if a member of a reserve component of the armed forces.

(c) The Governor is hereby authorized: To prescribe rules and regulations governing the appointment of officers, the enlistment of other personnel, the organization, administration, equipment, discipline and discharge of the personnel of such military force; to requisition from the Secretary of Defense such arms and equipment as may be in possession of and can be spared by the Department of Defense; and to furnish the facilities of available armories, equipment, State premises and property, for the purpose of drill and instruction.

(d) Such force shall not be called, ordered, or in any manner drafted, as such, into the military service of the United States, but no person shall by reason of membership therein, be exempt from military service under any federal law.

(e) The Governor is hereby authorized to transfer to the benefit of the State defense militia any available and unexpended funds which he shall find necessary for its use from any appropriations to the national guard by the General Assembly, and for the same purpose to allot moneys from the Contingency and Emergency Fund with the concurrence of the Council of State. Upon disbandment of the State defense militia any moneys or balance to the credit of any unit of this organization shall be paid into the State Treasury for the benefit of the national guard, and all property, clothing, and equipment belonging to the State shall be transferred to the account of the national guard for disposition in accordance with the best interests of the State and as deemed advisable by the Governor. Upon disbandment of any unit of the State defense militia prior to the disbandment of the entire organization, the Governor is authorized to direct the transfer of any State property or balance of funds of the disbanded unit to any other unit, including any new unit or units organized to fill vacancies, or otherwise, as the Governor may direct.

(f) The North Carolina State defense militia shall be subject to the military laws of the State not inconsistent with or contrary to the provisions contained in this article with the following exceptions:

The provisions of §§ 127-84, 127-85, and 127-102, as amended, shall not be applicable to the personnel and units of the State defense militia.

(g) There shall be allowed annually to each unit or company of the State defense

militia such funds as may be necessary to be applied to the payment of armory rent, heat, light, stationery, printing, and other expenses. The allowance to each unit annually shall not exceed three thousand dollars (\$3,000.00).

(h) All payments are to be made by the Adjutant General in accordance with State laws in semiannual installments on the first day of July and the first day of January of each year, but no payment shall be made unless all drills and duties required by law are duly performed by all organizations named.

(i) The commanding officer of each organization participating in the appropriation herein named shall render an itemized statement of all funds received from any source whatsoever for the support of the organization in such manner and on such forms as may be prescribed by the Adjutant General. Failure on the part of any officer to submit promptly, when due, the financial statement of his organization will be sufficient cause to withhold all appropriations for the organization. (1941, c. 43; 1943, c. 166; 1945, c. 209, s. 1; c. 835; 1957, c. 1083; 1963, c. 1016, s. 1.)

Editor's Note.—The 1943 amendment inserted the former second sentence of subsection (b). The first 1945 amendment struck out "9-19" from the list of inapplicable sections in subsection (f), and the second 1945 amendment inserted a proviso in subsection (b) relating to band members.

The 1957 amendment substituted "Secretary of Defense" for "Secretary of War"

and made other changes in subsection (a). The amendment changed subsection (c) by substituting "Secretary of Defense" for "Secretary of War" and "Department of Defense" for "War Department."

The 1963 amendment rewrote this section and changed the article heading from "State Guard" to "State Defense Militia."

§ 127-111.1. State defense militia cadre.—(a) The Governor is authorized: To organize and regulate part of the unorganized militia as a State defense militia cadre in units or commands which he may deem necessary to provide a cadre for an active State defense militia; to prescribe regulations for the maintenance of the property and equipment of the cadre, for the exercise of its discipline, and for its training and duties.

(b) The cadre shall be designated the "North Carolina State defense militia cadre" and shall be composed of a force of officers and enlisted personnel raised by appointment of the Governor, or otherwise, as may be provided by law. Personnel of the cadre shall serve without pay. The Adjutant General may reimburse cadre members for expenses actually incurred, not to exceed the amount appropriated and authorized for such purposes by the General Assembly.

(c) The Governor's authority hereunder shall not be subject to regulations prescribed by the Secretary of Defense. Age and membership requirements for the State defense militia generally, as set forth in G. S. 127-111, shall apply. The training of the cadre need not be in accordance with training regulations issued by the Department of Defense. The provisions of § 127-111 (c), (d), (g), and (h) shall apply.

(d) The total authorized strength of the cadre, its authorized officer and enlisted strength, the composition of each of its units or commands, and the allocation of cadre units or commands among the counties, cities, and towns of the State, shall be as prescribed by the Governor in suitable regulations enforced through the Adjutant General, or as otherwise provided by law.

(e) The duties of the State defense militia cadre shall be as ordered and directed by the Governor from time to time, or in regulations, and may include authority to take charge of armories and other military installations and real properties used by the North Carolina national guard, together with such other property as the regulations may provide, when and if the North Carolina national guard, or any part thereof, may be inducted into the service of the United States, or, for any extended period of time, may be absent on any duty from its home station. In addition, the cadre shall have duties appropriate to the organization, maintenance, and training of a military cadre to act as a nucleus for the organization of an active State defense militia whenever the necessity may arise. (1963, c. 1016, s. 1.)

ARTICLE 13.

Municipal and County Aid for Construction of Armory Facilities.

§ 127-112. **Appropriations to supplement available funds authorized.**—Any city or town and any county in the State separately or jointly, may make appropriations to supplement available federal or State funds to be used for the construction of armory facilities for the North Carolina national guard. Appropriations made under authority of this article shall be in such amounts and in such proportions as may be deemed adequate and necessary by the governing body of the county and/or municipality desiring to participate in the armory construction program. (1955, c. 1181, s. 1.)

§ 127-113. **Authority to raise funds when issuance of bonds and levy of tax for payment subject to approval at election.**—Counties and municipalities are hereby authorized to borrow money and issue and sell bonds and notes and to raise by taxation and otherwise, sufficient moneys to carry out the purpose of this article. The principal and interest on such bonds and notes as may be issued may be paid from general or other available funds of the county or municipality concerned; and, if necessary, the governing boards may levy sufficient taxes to raise funds to meet appropriations and to meet payments of principal and interest on such bonds or notes which may be issued hereunder. Taxes may be levied by the governing body of any county or municipality of the State for the special purpose of this article, for which special approval is hereby given. Counties may issue and sell such bonds or notes under the provisions of the County Finance Act, and municipalities may issue and sell such bonds or notes under the provisions of the Municipal Finance Act. The issuance of such bonds and the levy of a tax for the payment of the principal thereof and interest thereon shall be subject to the approval thereof by a majority of the qualified voters of the county or municipality concerned voting at an election held for such purpose if required by the Constitution or if required pursuant to the provisions of the County Finance Act or the Municipal Finance Act, but such approval at an election shall not be necessary if not required by the Constitution or pursuant to the provisions of the County Finance Act or the Municipal Finance Act. (1955, c. 1181, s. 2; 1961, c. 1042.)

Editor's Note.—The 1961 amendment added the last sentence.

§ 127-114. **Taxes in excess of limitations authorized if approved by voters.**—Notwithstanding any constitutional limitation or limitation provided by any general or special law, taxes may be levied by the governing body of any county or municipality of the State for the special purposes of this article for which special approval is hereby given; provided, that the levy of such taxes shall be approved by the vote of a majority of the qualified voters of such municipality who shall vote on the question of levying such taxes in an election held for such purpose. Such election as to counties may be held at the same time and in the same manner as elections held under the provisions of article 9 of chapter 153 of the General Statutes, the same being designated as the County Finance Act. Such election as to municipalities may be held under the Municipal Finance Act, the same being article 28 of chapter 160 of the General Statutes. (1955, c. 1181, s. 3.)

§ 127-115. **Bonds in excess of limitations authorized if approved by voters.**—Notwithstanding any limitations provided by the Constitution or by any general or special law as to the amount of bonds or obligations that may be issued, a county or municipality may issue and sell bonds or obligations in excess of such limitations for the purposes authorized by this article; provided, that such amount in excess of such constitutional limitation is referred to and approved by a majority of the qualified voters of such county or municipality voting in an election upon such question. (1955, c. 1181, s. 4.)

§ 127-116. Elections on questions of levying taxes.—Notwithstanding any constitutional limitation or limitation provided by any general or special law, taxes may be levied by the governing body of a county or municipality for the purpose of financing the appropriations authorized in §§ 127-112 and 127-113 and the special approval of the General Assembly is hereby given for the levying of taxes for such purposes; provided, that the levy of such taxes shall be approved by the majority vote of the qualified voters of such county or municipality, who shall vote on the question of levying such taxes in an election held for such purpose. The rate or amount of such taxes for which a levy may be made hereunder shall be determined by the governing body of the municipality and a ballot shall be furnished to each qualified voter at said election, which ballot may contain the words “For Armory Construction Facility Tax,” and “Against Armory Construction Facility Tax,” with squares in front of each proposition, in one of which squares the voter may make a cross-mark (X). Any other form of ballot containing adequate information and properly stating the question to be voted upon shall be construed as being in compliance with this section. Such elections as to counties may be held at the same time and in the same manner as elections held under article 9, of chapter 153, of the General Statutes, the same being designated as the County Finance Act. Such elections as to cities and towns may be held under the Municipal Finance Act, the same being article 28, of chapter 160, of the General Statutes. Such elections may be held at any time fixed by the governing body of the county or municipality concerned. The question of levying a tax for the purposes of this article may be submitted at the same time the question of issuing bonds is submitted as provided in this article, or the question of a levy of taxes may be submitted in a separate election according to the discretion and judgment of the governing body of the county or municipality concerned. (1955, c. 1181, s. 5.)

§ 127-117. Armory Commission Act not affected by article.—Nothing contained in this article shall have the effect of repealing any of the provisions of chapter 1010 of the Session Laws of 1947, (codified as §§ 143-229 to 143-235 and 143-236), and the power and authority herein granted are in addition to and not in substitution of existing power and authority of cities, counties and towns of this State as set forth in said sections. (1955, c. 1181, s. 6.)

Chapter 128.

Offices and Public Officers.

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- 128-39. Leaves of absence for State officials.
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ARTICLE 1.

General Provisions.

§ 128-1. **No person shall hold more than one office.**—No person who shall hold any office or place of trust or profit under the United States, or any department thereof or under this State, or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this State, or be eligible to a seat in either house of the General Assembly; provided, that nothing herein contained shall extend to officers in the militia, justices of the peace, commissioners of public charities, or commissioners for special purposes. (Const., art. 14, s. 7; Rev., s. 2364; C. S., s. 3200.)

- I. General Consideration.
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Cross References.

As to constitutional inhibition against double office holding, see N. C. Const., art. XIV, § 7, and annotations thereto. As to right of citizens and taxpayers of county to bring action to try right of person to hold two offices at the same time, see note to § 1-515.

I. GENERAL CONSIDERATION.

One person may not hold two offices in violation of article 14, § 7, of the Constitution. *Dowtin v. Beardsley*, 126 N. C. 119, 35 S. E. 241 (1900). For statute held unconstitutional as requiring the same person to fill two public offices, see *Brigman v. Baley*, 213 N. C. 119, 195 S. E. 617 (1938).

At common law there was no limit on the right of a citizen to hold several offices, except the incompatibility of the duties of the several officers. *Barnhill v. Thompson*, 122 N. C. 493, 29 S. E. 720 (1898).

Under Constitution.—The question in this State does not turn upon the incompatibility of the duties of the two offices alone, as it did at common law, but upon the plain positive language of the Constitution, art. 14, § 7. *Caldwell v. Wilson*, 121 N. C. 425, 28 S. E. 554 (1897); *Barnhill v. Thompson*, 122 N. C. 493, 29 S. E. 720 (1898).

Under Const. art. 14, § 7, an office or place of trust is a public position, involving a delegation to the individual of some part of the sovereign functions of the government to be exercised for the public benefit. *State v. Smith*, 145 N. C. 476, 59 S. E. 649 (1907).

Acceptance of Second Office Vacates First.—The acceptance of a second office by one already holding a public office operates ipso facto to vacate the first. While the officer has a right to elect which of the two he will retain, his election is deemed to be made when he accepts and qualifies for the second. *State v. Thompson*, 122 N. C. 493, 29 S. E. 720 (1898).

Necessity of Taking Oath.—The taking of an oath of office is not an indispensable criterion, for the office may exist without it. *State v. Stanley*, 66 N. C. 60 (1872); *State v. Patrick*, 124 N. C. 651, 33 S. E. 151 (1899).

An officer appointed for a definite time to a legislative office has no vested property therein or contract right thereto of which the legislature cannot deprive him. *Mial v. Ellington*, 134 N. C. 131, 46 S. E. 961 (1903), overruling *Hoke v. Henderson*, 15 N. C. 1 (1833).

And Legislature May Change Duties and Emoluments.—Although an office is a constitutional one, the legislature may, within reasonable limits, change the statutory duties and diminish the emoluments of such office, if the public welfare requires it. *Fortune v. Board*, 140 N. C. 322, 52 S. E. 950 (1905); *Commissioners v. Stedman*, 141 N. C. 448, 54 S. E. 269 (1906).

The legislature may attach additional duties to an existing office, and it may afterwards lop off those duties and assign them to a new office, leaving the original office as it was before the additional duties were attached to it. *Dowtin v. Beardsley*, 126 N. C. 119, 35 S. E. 241 (1900).

In respect to offices created and provided for by the Constitution, the people in convention assembled alone can alter, change their tenure, duties or emoluments, or abolish them; while in respect to legislative offices, it is entirely within the power of the legislature to deal with them as public policy may suggest and public interest may demand. *Mial v. Ellington*, 134 N. C. 131, 46 S. E. 961 (1903).

“Unless the Constitution otherwise expressly provides, the legislature has power to increase or vary the duties, or diminish the salary or other compensation appurtenant to the office, or abolish any of its rights or privileges before the end of the term, or to alter or abridge the term, or to abolish the office itself.” *Caldwell v. Wilson*, 121 N. C. 425, 28 S. E. 554 (1897), quoted in *Mial v. Ellington*, 134 N. C. 131, 46 S. E. 961 (1903).

The legislature may reduce or increase the salaries of such officers as are not protected by the Constitution during their term of office, but cannot deprive them of the whole. *Cotten v. Ellis*, 52 N. C. 545 (1860).

Manner of Appointment.—Where officers have to be appointed to fill a regular term, the Governor nominates to the Senate, unless it be an officer who is elected by the people, and then he fills the vacancy or term until the people can elect his successor. *People v. McIver*, 68 N. C. 467 (1873). See also, *People v. McKee*, 68 N. C. 429 (1873); *People v. Bledsoe*, 68 N. C. 457 (1873).

The power to create vacancies in a public office, incumbents of which are charged with continuing duties and responsibilities, rests, in the absence of provisions to the contrary, in the body possessing the original power of appointment. *Greene v. Owen*, 125 N. C. 212, 34 S. E. 424 (1899).

Offices whose duties are congruous may be consolidated; but it is just, in cases of consolidation of offices, to postpone the operation of the law until a vacancy appears in the office whose duties are to be transferred. *Troy v. Wooten*, 32 N. C. 377 (1849).

II. DISTINGUISHING CHARACTERISTICS.

In General.—Public office is tenure by virtue of an appointment, conferred by public authority. *Wills v. Melvin*, 53 N. C. 62 (1860).

The term embraces the ideas of tenure, duration, emolument and duties. *State v. Patrick*, 124 N. C. 651, 33 S. E. 151 (1899).

A public office is an agency for the State, and the person whose duty it is to perform this agency is a public officer. *State v. Stanley*, 66 N. C. 60, 8 Am. Rep. 488 (1872); *Barnhill v. Thompson*, 122 N. C. 493, 29

S. E. 720 (1898); *State Prison v. Day*, 124 N. C. 362, 32 S. E. 748 (1899).

This is considered to be the true definition of a public officer in its original, broad sense. The essence of it is the duty of performing an agency, that is, of doing some act or acts or series of acts for the State. *State v. Stanley*, 66 N. C. 60 (1872).

And a Parcel of the Administration of Government.—The true test of a public office is that it is a parcel of the administration of government, or is itself directly created by the lawmaking power. *Eliason v. Coleman*, 86 N. C. 236 (1882).

Portion of Sovereignty Attaches.—An office or place of trust requiring a proceeding by quo warranto for the amotion of the incumbent is defined as a public position to which a portion of the sovereignty of the country, either legislative, executive or judicial, attaches for the time being, and which is exercised for the benefit of the public. *State v. Smith*, 145 N. C. 476, 59 S. E. 649 (1907).

Combination of Duty and Agency.—The word "office" in its primary signification implies a duty or duties—the agency from the State to perform the duties. The duties of the office are of first consequence, and the agency from the State to perform those duties is the next step in the creation of an office. It is the union of the two factors, duty and agency, which makes the office. *State Prison v. Day*, 124 N. C. 362, 32 S. E. 748, 46 L. R. A. 295 (1899).

Distinguished from a Public Agency.—The most important characteristic which distinguishes an office from a public agency is that the conferring of the office carries with it a delegation to the individual of some of the sovereign functions of the government. In this respect the terms "office" and "place of trust" as used in our Constitution are synonymous. *Doyle v. Raleigh*, 89 N. C. 133, 45 Am. Rep. 677 (1883); *Barnhill v. Thompson*, 122 N. C. 493, 29 S. E. 720 (1898); *State v. Smith*, 145 N. C. 476, 59 S. E. 649 (1907).

Mere Addition of Duties.—An act which merely attaches new duties to existing officers does not create a new office. *McCullers v. Board*, 158 N. C. 75, 73 S. E. 816 (1911).

Authority to Appoint.—If a person is authorized to appoint to an office, this duty of itself constitutes him a public officer. *State v. Stanley*, 66 N. C. 60, 8 Am. Rep. 488 (1872), citing *Hoke v. Henderson*, 15 N. C. 1 (1833); *State v. Tate*, 68 N. C. 546 (1873).

Distinguished from Employment and Contract.—An "office" is defined by good authority as involving a delegation to the individual of some of the sovereign functions of government, to be exercised by him for the benefit of the public, by which it is distinguished from "employment" or "contract." *Eliason v. Coleman*, 86 N. C. 236 (1882); *Barnhill v. Thompson*, 122 N. C. 493, 29 S. E. 720 (1898).

A public office is an administrative

agency or public employment, and although an office is an employment, it does not follow that every employment is an office. *State v. Smith*, 145 N. C. 476, 59 S. E. 649 (1907).

Distinguished from Placemen.—The distinction between officers and placemen is that the former are required to take an oath to support the Constitutions of the State and of the United States; whilst the latter are not. *Worthy v. Barrett*, 63 N. C. 199 (1869).

III. GENERAL ILLUSTRATIONS.

Governor and Others in Executive Department.—The executive department is an agency for the State, and the Governor and others, whose duty it is to discharge this agency, are public officers. *State v. Stanley*, 66 N. C. 60 (1872).

Judges.—The judicial department is an agency for the State, and the judges are public officers. *State v. Stanley*, 66 N. C. 60, 8 Am. Rep. 488 (1872).

A clerk of the court is a public officer. *Wilson v. Jordan*, 124 N. C. 683, 33 S. E. 139 (1899).

A recorder is a public officer. *Rhodes v. Love*, 153 N. C. 468, 69 S. E. 436 (1910). See *State v. Lord*, 145 N. C. 479, 59 S. E. 656 (1907).

Federal District Attorney Acting as Solicitor.—The appointment by the judge of the United States district attorney to act temporarily for an absent solicitor in the prosecution of a criminal action in the State court, does not come within the inhibition of our Constitution, art. 14, § 7, as to holding two offices at the same time. *State v. Wood*, 175 N. C. 809, 95 S. E. 1050 (1918).

Legislative Members.—The legislative department is an agency for the State, and the members of the Senate and of the House of Representatives are public officers in the broad sense the term is used in the Constitution of the State. *State v. Stanley*, 66 N. C. 60 (1872).

In *Worthy v. Barrett*, 63 N. C. 199 (1869), it is said that "members of the legislature are not officers. Theirs are places of trust and profit, but not offices of trust and profit." *Doyle v. Raleigh*, 89 N. C. 133 (1883). In this instance the court was using the terms in the restricted sense in which they are used in the Fourteenth Amendment to the Constitution of the United States. *State v. Stanley*, 66 N. C. 60 (1872).

The members of the county board of education are public officers. *Barnhill v. Thompson*, 122 N. C. 493, 29 S. E. 720 (1898); *Greene v. Owen*, 125 N. C. 212, 34 S. E. 424 (1899).

State Printer.—Under the acts abolishing the office of State printer and providing for letting of State printing by contract, the position of State printer was not a public office. *Brown v. Turner*, 70 N. C. 93 (1874).

University Trustees and Directors of

State Institutions.—The trustees of the University of North Carolina and the directors of the penitentiary, of the lunatic asylum and of the institution for the deaf, dumb and blind, are public officers. *People v. McKee*, 68 N. C. 429 (1873); *People v. Bledsoe*, 68 N. C. 457 (1873); *People v. Johnson*, 68 N. C. 471 (1873); *People v. McGowan*, 68 N. C. 520 (1873).

The office of the superintendent of the State prison, with its attendant duties, is a public office. *State Prison v. Day*, 124 N. C. 362, 32 S. E. 748 (1899).

A constable is a public officer. *Rhodes v. Love*, 153 N. C. 468, 69 S. E. 436 (1910).

Chief Shellfish Inspector.—The office of chief inspector of the shellfish commission is a public office. *White v. Hill*, 125 N. C. 194, 34 S. E. 432 (1899).

A town clerk is a public officer. *Rhodes v. Love*, 153 N. C. 468, 69 S. E. 436 (1910).

Clerk of the Peace.—See *Rhodes v. Love*, 153 N. C. 468, 69 S. E. 436 (1910).

Parish Clerk.—See *Rhodes v. Love*, 153 N. C. 468, 69 S. E. 436 (1910).

Clerk of City Works.—It has even been held that a clerk of the city works is a public officer. *Rhodes v. Love*, 153 N. C. 468, 69 S. E. 436 (1910).

The office of brigadier general under the Confederate States was held to be incompatible with that of Adjutant General of the State of North Carolina, and the ac-

ceptance of the former office was held to vacate the latter which was held at the time of such acceptance. In the *Matter of Martin*, 60 N. C. 153 (1863), in the appendix.

The position of public administrator is a mere administrative agency, and not an office or place of trust, within the Const., Art. 14, § 7. *State v. Smith*, 145 N. C. 476, 59 S. E. 649 (1907).

Sexton.—It has even been held that a sexton is a public officer. *Rhodes v. Love*, 153 N. C. 468, 69 S. E. 436 (1910).

A night watchman acting under an appointment from the treasury department of the United States to guard and protect a post-office building from depredation and injury did not hold an office or place of trust and profit that disabled him from being a member of a board of aldermen. *Doyle v. Raleigh*, 89 N. C. 133 (1883).

The chief engineer of the Western North Carolina Railroad is not a public officer. *Eliason v. Coleman*, 86 N. C. 236 (1882).

Performance of Duties after End of Term.—Where the statute imposes certain duties to be performed by an officer after the expiration of the term of office, their performance does not constitute a place or office of trust or profit so as to disqualify the former officer from holding another office at the same time. *State v. Somers*, 96 N. C. 467, 2 S. E. 161 (1887).

§ 128-2. Holding office contrary to the Constitution; penalty.—If any person presumes to hold any office, or place of trust or profit, or is elected to a seat in either house of the General Assembly, contrary to the seventh section of the fourteenth article of the Constitution of the State, he shall forfeit and pay two hundred dollars to any person who will sue for the same. Provided, such action shall not be brought or maintained by any person who is not a bona fide resident of the same county in which the defendant resides. (1790, c. 319, P. R.; 1792, c. 366, P. R.; 1793, c. 393, P. R.; 1796, c. 450, P. R.; 1811, c. 811, P. R.; R. C., c. 77, s. 1; Code, s. 1870; Rev., s. 2365; C. S., s. 3201; Ex. Sess. 1924, c. 110.)

Cross Reference.—As to parties to suits for penalties, see § 1-58.

Editor's Note.—The 1924 amendment added the proviso.

§ 128-3. Bargains for office void.—All bargains, bonds and assurances made or given for the purchase or sale of any office whatsoever, the sale of which is contrary to law, shall be void. (5 and 6 Edw. VI, c. 16, s. 3; R. C., c. 77, s. 2; Code, s. 1871; Rev., s. 2366; C. S., s. 3202.)

Theory of Appointments.—By the theory of our government, appointments to office are presumed to be made solely upon the principle *detur digniori*, and any practice whereby the bare consideration of money is brought to bear in any form upon such appointments to or resignation of office conflicts with and degrades this great principle. The services performed under such appointments are paid for by salary or fees, presumed to be adjusted at the point of adequate remuneration only. Any premium paid to obtain office interferes with this adjustment and tempts to speculation, overcharges and frauds in the effort to restore the balance thus disturbed. *Basket v. Moss*, 115 N. C. 448, 20 S. E. 733 (1894).

The public has a right to some better test of the capacity of their servants than the fact that they possess the means of purchasing their offices. *Basket v. Moss*, 115 N. C. 448, 20 S. E. 733 (1894).

Agreements Void.—Public offices are public trusts, and should be conferred solely upon considerations of ability, integrity, fidelity and fitness for the position. Agreements for compensation to procure these tend directly and necessarily to lower the character of the appointments, to the great detriment of the public. Hence, such agreements, of whatever nature, have always been held void as being against public policy. *Basket v. Moss*, 115 N. C. 448, 20 S. E. 733 (1894).

Contracts to procure appointments to an office or to resign an office in another's favor are void at common law, as well as by statute. *Basket v. Moss*, 115 N. C. 448, 20 S. E. 733 (1894).

Same—Federal Offices.—Notwithstand-

ing the office is under the United States government, if an action were brought in our courts to recover upon a bond or mortgage given for such consideration, our courts would hold it void. *Basket v. Moss*, 115 N. C. 448, 20 S. E. 733 (1894).

§ 128-4. Receiving compensation of subordinates for appointment or retention; removal.—Any official or employee of this State or any political subdivision thereof, in whose office or under whose supervision are employed one or more subordinate officials or employees who shall, directly or indirectly, receive or demand, for himself or another, any part of the compensation of any such subordinate, as the price of appointment or retention of such subordinate, shall be guilty of a misdemeanor: Provided, that this section shall not apply in cases in which an official or employee is given an allowance for the conduct of his office from which he is to compensate himself and his subordinates in such manner as he sees fit. Any person convicted of violating this section, in addition to the criminal penalties, shall be subject to removal from office. The procedure for removal shall be the same as that provided for removal of certain local officials from office by §§ 128-16 to 128-20, inclusive. (1937, c. 32, ss. 1, 2.)

§ 128-5. Oath required before acting; penalty.—Every officer and other person required to take an oath of office, or an oath for the faithful discharge of any duty imposed on him, and also the oath appointed for such as hold any office of trust or profit in the State, shall take all said oaths before entering on the duties of the office, or the duties imposed on such person, on pain of forfeiting five hundred dollars to the use of the poor of the county in or for which the office is to be used, and of being ejected from his office or place by proper proceedings for that purpose. (R. C., c. 77, s. 4; Code, s. 1873; Rev., s. 2367; C. S., s. 3203.)

Office May Exist without Taking of Oath.—The taking of the oath of office is not an indispensable criterion, for the office may exist without it. It is a mere incident, and constitutes no part of the office. *State v. Stanley*, 66 N. C. 60 (1872); *State v. Patrick*, 124 N. C. 651, 33 S. E. 151 (1899).

And Acts May be Valid Though Oath

Not Taken.—Failure to take an oath of office, while it might subject one exercising the duties of the office to a penalty under this section, would not deprive his acts of the validity given those of de facto officers performing the duties of a de jure office. *Vance S. Harrington & Co. v. Renner*, 236 N. C. 321, 72 S. E. (2d) 838 (1952).

§ 128-6. Persons admitted to office deemed to hold lawfully.—Any person who shall, by the proper authority, be admitted and sworn into any office, shall be held, deemed, and taken, by force of such admission, to be rightfully in such office until, by judicial sentence, upon a proper proceeding, he shall be ousted therefrom, or his admission thereto be, in due course of law, declared void. (Const., art. 4, s. 25; 1844, c. 38, s. 2; 1848, c. 64, s. 1; R. C., c. 77, s. 3; Code, s. 1872; Rev., s. 2368; C. S., s. 3204.)

This section applies to a person who, having duly qualified, is performing the duties of the office under color of right, and not to a case where the appointee of the Governor, requiring the concurrence of the Senate in order to hold his office for the full unexpired term of his predecessor, is holding over after the Senate has met and concurred in the appointment of another. *State v. Croom*, 167 N. C. 223, 83 S. E. 354 (1914).

To constitute an officer de facto it is requisite that there be some colorable election or appointment to and induction into the office. *Van Amringe v. Taylor*, 108 N. C. 196, 12 S. E. 1005, 23 Am. St. Rep. 51, 12 L. R. A. 202 (1891), citing *Burke v. Elliott*, 26 N. C. 355 (1844); *Gilliam v.*

Reddick, 26 N. C. 368 (1844); *Commissioners v. McDaniel*, 52 N. C. 107 (1859); *Keeler v. New Bern*, 61 N. C. 505 (1868); *People v. Staton*, 73 N. C. 546 (1875); *State v. Lewis*, 107 N. C. 967, 12 S. E. 457, 13 S. E. 247 (1890).

The indispensable basis of being a de facto officer is that there is such an office. *State v. Shuford*, 128 N. C. 588, 38 S. E. 808 (1901).

Persons who have been regarded as public officers for the greater part of the time during which the office existed, and whose acts are recognized by other public functionaries, must be taken to be officers de facto. *Burton v. Patton*, 47 N. C. 124, 62 Am. Dec. 194 (1854).

An officer de facto is one whose acts,

though not those of a lawful officer, the law, upon principles of policy and justice, will hold valid, so far as they involve the interests of the public and third persons, where the duties of the office were exercised (1) without a known appointment or election, but under such circumstances of reputation or acquiescence as were calculated to induce people, without inquiry, to submit to or invoke his action, supposing him to be the officer he assumed to be; (2) under color of a known and valid appointment or election, but where the officer failed to conform to some precedent requirement or condition, such as taking an oath, giving a bond, or the like; (3) under color of a known election or appointment, void because there was a want of power in the electing or appointing body, or by reason of some defect or irregularity in its exercise, such ineligibility, want of power or defect being unknown to the public; (4) under color of an election or appointment, by or pursuant to a public unconstitutional law, before the same is adjudged to be such. *State v. Lewis*, 107 N. C. 967, 12 S. E. 457, 13 S. E. 247 (1890); *State v. Taylor*, 108 N. C. 196, 12 S. E. 1005 (1891). See *State v. Speaks*, 95 N. C. 689 (1886); *Whitehead v. Pittman*, 165 N. C. 89, 80 S. E. 976 (1914).

Acts of de facto officers, who exercise their office for a considerable length of time, are as effectual when they concern the rights of third persons or the public as if they were officers de jure, but to constitute one an office de facto there must be an actual exercise of the office and acquiescence of the public authorities long enough to cause, in the mind of the citizen, a strong presumption that the officer was duly appointed. *Hughes v. Long*, 119 N. C. 52, 25 S. E. 743 (1896), citing *Burke v. Elliott*, 26 N. C. 355 (1844); *Gilliam v. Reddick*, 26 N. C. 368 (1844); *State v. Lewis*, 107 N. C. 967, 12 S. E. 457, 13 S. E. 247 (1890).

The acts of one purporting to be an officer are evidence of his authority; and such acts, as to third persons, are to be taken as valid while the incumbent is thus acting. *Swindell v. Warden*, 52 N. C. 575 (1860).

The official acts of persons entering into office under color of an irregular election are of full force until such officers are removed by a proper proceeding. *Commissioners v. McDaniel*, 52 N. C. 107 (1859).

Usurping, De Facto and De Jure Officers Distinguished.—A usurper is one who takes possession without any authority. His acts are utterly void, unless he continues to act for so long a time or under such circumstances as to afford a presumption of his right to act. And then his acts are valid as to the public and third persons. But he has no defense in a direct proceeding against himself. A de facto officer is one who goes in under color of authority or who exercises the duties of the office so long or under such circumstances as to raise a presumption of his right; in which cases his necessary official acts are valid as to

the public and third persons; but he may be ousted by a direct proceeding. A de jure officer is one who is regularly and lawfully elected or appointed and inducted into office and exercises the duties as his right. All his necessary official acts are valid, and he cannot be ousted. The only difference between an officer de facto and an officer de jure is that the former may be ousted in a direct proceeding against him, while the latter cannot be. So far as the public and third persons are concerned, there is no difference whatever. The acts of one have precisely the same force and effect as the acts of the other. *People v. Staton*, 73 N. C. 546 (1875), citing *Burke v. Elliott*, 26 N. C. 355 (1844); *Gilliam v. Reddick*, 26 N. C. 368 (1844); *Commissioners v. McDaniel*, 52 N. C. 107 (1859); *Swindell v. Warden*, 52 N. C. 575 (1860); *Keeler v. New Bern*, 61 N. C. 505 (1868); *Culver v. Eggers*, 63 N. C. 630 (1869); *Ellis v. N. C. Institution*, 68 N. C. 423 (1873).

A mere intruder or usurper is not ordinarily, but may become, an officer de facto in some cases. This can happen only by the continued exercise of the office by him and the acquiescence therein by the public authorities and the public for such length of time as to afford to citizens generally a strong presumption that he had been duly appointed. But when without color of authority he simply assumes to act, to exercise authority as an officer, and the public know the fact, or reasonably ought to know that he is a usurper, his acts are absolutely void for all purposes. The mere fact that, apart from his usurpation, his supposed official acts were fair and honest could not impart to them validity and efficiency. *Burke v. Elliott*, 26 N. C. 355 (1844); *State v. Staton*, 73 N. C. 546 (1875); *State v. Taylor*, 108 N. C. 196, 12 S. E. 1005, 23 Am. St. Rep. 51, 12 L. R. A. 202 (1891); *Whitehead v. Pittman*, 165 N. C. 89, 80 S. E. 976 (1914).

Appointment Biennially.—A proviso for an appointment to office "biennially" ex vi termini implies a two-year term of office. *State v. Patrick*, 124 N. C. 651, 33 S. E. 151 (1899).

Tabulation of Election Result by Clerk.—A tabulation of the result of an election by the clerk, in the manner required by law, is prima facie correct, and can only be questioned in a quo warranto proceeding. *Cozart v. Fleming*, 123 N. C. 547, 31 S. E. 822 (1898).

Injunction is not the proper method of trying title to an office and it will not lie at the suit of the incumbent of a public office to restrain a claimant of the office from claiming and exercising its powers and duties. *Patterson v. Hubbs*, 65 N. C. 119 (1871); *Jones v. Commissioners*, 77 N. C. 280 (1877).

The erroneous action of the county commissioners in declaring an office vacant because of an apparent tie vote, and ordering a new election, does not warrant the granting of an injunction to one of the candidates, since the title to the office can be

inquired into by quo warranto even after such a new election. *Cozart v. Fleming*, 123 N. C. 547, 31 S. E. 822 (1898).

Injunction does not lie to restrain county commissioners from declaring a public office vacant because of an apparent tie vote where it is an attempt, in effect, to try the title to the office by injunction, which is not permissible. *Cozart v. Fleming*, 123 N. C. 547, 31 S. E. 822 (1898).

Who May Bring Action to Try Right to Office.—An action to try the right of an incumbent to any public office may be brought by the Attorney General upon his own information, or upon the complaint of any private party. *People v. Wilson*, 72 N. C. 155 (1875); *People v. Hilliard*, 72 N. C. 169 (1875).

Right of Action.—Any person having a right to an office, can in his own name, bring an action for the purpose of testing his right as against one claiming adversely. *Brown v. Turner*, 70 N. C. 93 (1874).

Notwithstanding the maxim "*De minimis non curat lex*," a suit will be entertained to determine rights to an office paying only eight dollars a month in addition to board. *Greene v. Owen*, 125 N. C. 212, 34 S. E. 424 (1899).

Proceeding in Nature of Quo Warranto.—Title to a public office cannot be tried by motion, but must be determined by a proceeding in the nature of quo warranto. *Sneed v. Bullock*, 77 N. C. 282 (1877), citing *Patterson v. Hubbs*, 65 N. C. 119 (1871); *Brown v. Turner*, 70 N. C. 93 (1874).

Same—As to Necessity of Demand.—No demand is necessary before suing to try the right to an office. *Shennonhouse v. Withers*, 121 N. C. 376, 28 S. E. 522 (1897).

Same—Allegation of Citizenship in Complaint.—Where persons who have been elected and qualified as county commissioners bring an action against persons appointed by the judge of the district, under the provisions of ch. 135, Laws 1895, to try the defendants' title to office, the complaint must allege that the plaintiffs are citizens and taxpayers of the county. *Houghtalling v. Taylor*, 122 N. C. 141, 29 S. E. 101 (1898), citing *Foard v. Hall*, 111 N. C. 369, 16 S. E. 420 (1892); *Hines v. Vann*, 118 N. C. 3, 23 S. E. 932 (1896).

§ 128-7. Officer to hold until successor qualified.—All officers shall continue in their respective offices until their successors are elected or appointed, and duly qualified. (1848, c. 64, s. 2; R. C., c. 77, s. 3; Code, s. 1872; Rev., s. 2368; C. S., s. 3205.)

Holding Over after Expiration of Term.—An officer elected by the people, holding over after his regular term on failure of his successor to qualify, holds over until the place is filled at the next general election, under Const., art. 3, §§ 1, 13. *People v. McIver*, 68 N. C. 467 (1873).

Where an officer has been inducted into his office before the beginning of the term for which he was re-elected, one who is appointed to fill the vacancy, caused by his

A realtor in quo warranto proceedings to try title to office accepts the position that he has been displaced in the office, by the form of action in which he seeks to assert his rights, and may not therein avail himself of the position that under the section, he should have been ousted therefrom by a judicial sentence, under a proper proceeding, etc. *State v. Croom*, 167 N. C. 223, 83 S. E. 354 (1914).

Conduct Amounting to Surrender of Office.—Where a person had been elected clerk of the superior court, and at the proper time had tendered his bonds, which had been accepted by the court, and he was inducted into office, while the former clerk was present in court, cognizant of what was going on, and did not object thereto, but surrendered up the office and records to the new clerk and retired from the performance of the duties of the office for twelve months thereafter, it was held, in an action in the nature of quo warranto, that such conduct in the old clerk amounted to a surrender of his office to the court, and justified the reception and induction into office of the newly elected clerk. *Williams v. Somers*, 18 N. C. 61 (1834).

Estoppel to Deny Acceptance and Qualification.—A person who held himself out and who acted as an officer and who signed his name as such, and who in writing resigned the office, is estopped from denying that he accepted the office, and he vacated a prior office filled by him. *Midgett v. Gray*, 159 N. C. 443, 74 S. E. 1050 (1912), reversing judgment on rehearing on other grounds 158 N. C. 133, 73 S. E. 791 (1912).

A person who held himself out and who acted as an officer is estopped to deny his qualification when the acceptance of such office is relied on to vacate a prior office filled by him, and that he was not sworn on the Bible when he qualified for the second office is not available. *Midgett v. Gray*, 159 N. C. 443, 74 S. E. 1050 (1912), reversing judgment on rehearing on other grounds 158 N. C. 133, 73 S. E. 791 (1912). See *State v. Cansler*, 75 N. C. 442 (1876); *State v. Long*, 76 N. C. 254 (1877).

Cited in *In re Wingler*, 231 N. C. 560, 58 S. E. (2d) 372 (1950).

death before that term begins, holds only until the expiration of the first term. *State v. Smith*, 81 N. C. 304 (1879).

Term of Appointee of Judge.—In case of a vacancy in the office of the clerk of the superior court the appointee of the judge holds only until the next election at which members of the General Assembly are chosen. *Rodwell v. Rowland*, 137 N. C. 617, 50 S. E. 319 (1905).

Status of Officer Holding Over—De Jure.

—Whether regarded as a part of an original term or a new and conditional one by virtue of the statute, the holders are regarded as officers *de jure* until their successors have been lawfully elected or appointed and have properly qualified. *State v. Simpson*, 175 N. C. 135, 95 S. E. 106 (1918).

Same—De Facto.—Where a clerk of the superior court held over in office until his successor qualified, he was at least clerk *de facto*; his acts cannot be collaterally impeached, and are valid as to third parties. *Threadgill v. Carolina Cent. R. Co.*, 73 N. C. 178 (1875).

The mayor of a municipality was constituted a special court for the municipality by valid act (chap. 144, Private Laws of 1913). A duly elected and qualified mayor assumed the duties as judge of the special court under claim of authority. By chap. 1142, Session Laws of 1949, it was provided that said judge should be appointed by the commissioners of the town, and that he should hold no other office. The town commissioners failed to appoint a judge under the provisions of this act. It was held that a sentence imposed by the mayor acting

as judge of the special court cannot be collaterally attacked in habeas corpus since he was at least a judge *de facto* if not *de jure*. *In re Wingler*, 231 N. C. 560, 58 S. E. (2d) 372 (1950).

When Legislature Presumed to Acquiesce in Continuation in Office.—The General Assembly having failed to appoint or provide for the election of successors to the highway and sinking fund commissioners of Madison County, who were appointed for a four- or six-year term by ch. 341, Public-Local Laws of 1931, the General Assembly having power to terminate, their continuance in office, and the General Assembly having power to terminate, change or continue the appointments, it will not be held that it intended to create perpetuities or exclusive emoluments in violation of any of the provisions of Article I of the Constitution, and said commissioners continue to hold office with power to discharge the duties thereof. *Freeman v. Board of Com'rs*, 217 N. C. 209, 7 S. E. (2d) 354 (1940).

Cited in *Hedgpeth v. Allen*, 220 N. C. 528, 17 S. E. (2d) 781 (1941); *Hill v. Ponder*, 221 N. C. 58, 19 S. E. (2d) 5 (1942).

§ 128-8. Officers and employees responsible for cash or property to be surety bonded.—All officers, officials and employees of the State charged with responsibility for cash, securities and/or property shall be surety bonded in corporate sureties admitted to do business in the State in such sums as may be fixed by the Governor and the Advisory Budget Commission. The premiums on such surety bonds will be paid by the State out of the appropriations to the respective departments and institutions and other agencies. (1929, c. 337, s. 5.)

§ 128-9. Peace officers employed by State to give bond.—The State of North Carolina shall require every peace officer employed by the State, elected or appointed, to give a bond with good surety payable to the State of North Carolina, in a sum not less than one thousand dollars (\$1,000.00) and not more than two thousand five hundred dollars (\$2,500.00), conditioned as well for the faithful discharge of his or her duty as such peace officer as for his diligently endeavoring to faithfully collect and pay over all sums of money received. Said bond shall be duly approved and filed in the office of the Insurance Commissioner, and certified copies of the same by the Insurance Commissioner shall be received and read in evidence in all actions and proceedings where the original might be. (1937, c. 339, s. 1.)

Failure to Give Bond Does Not Affect Capacity to Execute Judicial Process.—The fact that law enforcement officers appointed by a board of alcoholic control have not given bond as required by this section does not affect their capacity to execute a search warrant or other judicial process, since the giving of bond is not a condition precedent to the authority of a public officer to perform his duties but is solely for the protection and indemnification of persons who may be damaged by his failure or neglect in the discharge of his duties. *Hinson v. Britt*, 232 N. C. 379, 61 S. E. (2d) 185 (1950).

Failure to Require Bond Does Not Render Board Liable for Assault.—Members of county alcoholic beverage control board are not liable to person assaulted by enforcement officer by reason of their failure to require enforcement officer to file bond. *Langley v. Taylor*, 245 N. C. 59, 95 S. E. (2d) 115 (1956).

Applied in *Langley v. Patrick*, 238 N. C. 250, 77 S. E. (2d) 656 (1953).

Stated in *Jordan v. Harris*, 225 N. C. 763, 36 S. E. (2d) 270 (1945).

Cited in *State v. Mobley*, 240 N. C. 476, 83 S. E. (2d) 100 (1954).

§ 128-10. Citizen to recover funds of county or town retained by delinquent official.—When an official of a county, city or town is liable upon his bond for unlawfully and wrongfully retaining by virtue of his office a fund, or a part thereof, to which the county, city or town is entitled, any citizen and taxpayer may, in his

own name for the benefit of the county, city or town, institute suit and recover from the delinquent official the fund so retained. Any county commissioners, aldermen, councilmen or governing board who fraudulently, wrongfully and unlawfully permit an official so to retain funds shall be personally liable therefor; any citizen and taxpayer may, in his own name for the benefit of the county, city or town, institute suit and recover from such county commissioners, aldermen, councilmen, or governing board, the fund so retained. Before instituting suit under this section, the citizen and taxpayer shall file a statement before the county commissioners, treasurer, or other officers authorized by law to institute the suit, setting forth the fund alleged to be retained or permitted to be retained, and demanding that suit be instituted by the authorities authorized to sue within sixty days. The citizen and taxpayer so suing shall receive one-third part, up to the sum of five hundred dollars, of the amount recovered, to indemnify him for his services, but the amount received by the taxpayer and citizen as indemnity shall in no case exceed five hundred dollars. (1913, c. 80; C. S., s. 3206.)

Citizens and taxpayers of a county may maintain an action against the commissioners of the county and its defaulting sheriff to enforce collection of the amount of the default upon allegations that the county commissioners have corruptly refused to perform their duties in this respect. *Weaver v. Hampton*, 201 N. C. 798, 161 S. E. 480 (1931).

This section applies to money collected before the passage of the act, and a citizen and taxpayer on sufficient and proper averment of default on the part of the county officials, has a right to maintain an action of this character without resort to the provisions of the statute. *Waddill v. Masten*, 172 N. C. 582, 90 S. E. 694 (1916).

Resident Judge without Authority to Indemnify Plaintiffs.—In an action by taxpayers under this section to recover of county commissioners on account of public funds unlawfully expended, etc., plaintiffs disclaiming any right personally to participate in the recovery, it was held that after a recovery by plaintiffs and the entry of a consent judgment dismissing the appeals, wherein no mention was made of indemnifying plaintiffs for their services, the

resident judge was without authority to entertain a petition of one of the original taxpayer plaintiffs for such reimbursement. *Hill v. Stansbury*, 224 N. C. 356, 30 S. E. (2d) 150 (1944).

Authority of Commissioners to Allow County Treasurer Additional Salary.—In a civil action by taxpayers against county commissioners and against the treasurer of the county to recover moneys paid to such treasurer in excess of his annual salary as fixed by law, where the evidence tended to show that the county treasurer's salary was fixed at \$1,800 a year in 1927, and that in 1931, agreeable to the Machinery Act of that year (§ 105-271 et seq.), the commissioners designated the county treasurer to receive tax prepayments and for this extra service allowed him \$1,200 per year additional, and again in 1939 allowed him \$240 more per annum, both without legislative authority, judgment of nonsuit as to the commissioners was properly allowed under the express provisions of this section, there being no evidence of bad faith, etc., while such judgment as to the county treasurer was reversed. *Hill v. Stansbury*, 223 N. C. 193, 25 S. E. (2d) 604 (1943).

§ 128-11. Trust funds to be kept separate.—Any sheriff, treasurer or other officer of any county, city, town or other political subdivision of the State, receiving, by virtue of his office, public money or money to be held by him in trust shall keep or deposit such money or the credits or other evidence thereof separate and apart from his own funds and shall not, at any time, apply such money to his own use or benefit or intermingle the same in any manner with credits or funds of his own. (1931, c. 77, s. 1.)

Cited in *Patterson v. Southern Ry. Co.*, 214 N. C. 38, 198 S. E. 364 (1938).

§ 128-12. Violations to be reported; misdemeanors.—It shall be the duty of the director of the Local Government Commission to report to the solicitor of the district any violation of § 128-11 of which he may have knowledge, and any violation of such section shall be unlawful and shall constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. (1931, c. 60, s. 3; 1931, c. 77, s. 2.)

Cited in *Patterson v. Southern Ry. Co.*, 214 N. C. 38, 198 S. E. 364 (1938).

§ 128-13. Local: Officers compensated from fees to render statement; penalty; proceeds to school fund.—Every clerk of the superior court, register of deeds, sheriff, coroner, surveyor, or other county officer, whose compensation or services performed shall be derived from fees, shall render to the board of county commissioners of their respective counties, on the first Monday in December of each year, a statement, verified under oath, showing: First, the total gross amount of all fees collected during the preceding fiscal year; second, the total amount paid out during the preceding fiscal year for clerical or office assistance. Any county officer, subject to this section, who refuses or fails to file such report as above provided, on or before the first Monday in December, shall be subject to a fine of twenty-five dollars and ten dollars additional for each day or fraction of a day such failure shall continue. The board of county commissioners shall assess and collect the penalty above provided for, and apply same to the general school fund of the county. The first report under this section shall be for the fiscal year beginning December twelfth, one thousand nine hundred and thirteen.

This section applies only to the counties of Anson, Bertie, Bladen, Cabarrus, Carteret, Chowan, Currituck, Duplin, Halifax, Harnett, Haywood, Hertford, Johnston, Jones, Moore, Pender, Perquimans, Pitt, Randolph, Richmond, Rowan, Scotland, Union, Vance, Warren, Washington, Wayne, Wilson. (1913, c. 97; Ex. Sess. 1913, c. 10; 1935, c. 390.)

Power of Legislature to Regulate Pay.—One who accepts a public office does so, with well defined exceptions as to certain constitutional officers, under the authority of the legislature to change the emoluments he is to receive for the performance of his duties, at any time, and, while the office of sheriff is a constitutional one, the regulation of his fees is within the control of the legislature, and the same may be reduced during the term of the incumbent or he may therein be compensated by a salary instead of on a fee basis. *Mills v. Deaton*, 170 N. C. 386, 87 S. E. 123 (1915).

Construction of Act Changing Pay from Salary to Fee Basis.—An act changing the pay of county officials from a salary to a fee basis, taking prospective effect from the expiration of the terms of the present incumbents, will be presumed to have a sensible and just intent, with knowledge of existing conditions and will not be construed as to apply to deprive the incumbent sheriff of the emoluments of his term by requiring that he deliver the tax lists to his successor. *Commissioners v. Bain*, 173 N. C. 377, 92 S. E. 176 (1917).

§ 128-14. Identification cards for field agents or deputies of State departments.—Every field agent or deputy of the various State Departments who is authorized to collect money, audit books, inspect premises of individual or business firms and/or any other field work pertaining to the department which he represents, shall be furnished with an identification card signed by the head of the department represented by him, certifying that the said field agent or deputy has authority to represent the department, and such identification card shall carry a photographic likeness of said representative. (1937, c. 236.)

§ 128-15. Employment preference for veterans and their wives or widows.—Hereafter, in all examinations of applicants for positions with this State or any of its departments, institutions or agencies, a preference rating of ten (10) points shall be awarded to all the citizens of the State who served the State or the United States honorably in either the Army, Navy, Marine Corps, Nurses' Corps, Air Corps, Air Force, or any of the armed services in time of war, including the Korean war or conflict.

All the departments, or institutions of the State, or their agencies, shall give preference in appointments and promotional appointments to qualified veteran applicants as enumerated in this section in filling vacant positions in construction or maintenance of public buildings and grounds, construction of highways or any other employment under the supervision of the State or its departments, institutions, or agencies; provided, that the provisions of this section shall apply to the widows of such veterans and to the wives of disabled veterans. No State department, officer, institution or agency of the State shall bar or prohibit any veteran or person named

in this section from employment because of age if such veteran or person is otherwise qualified.

In all promotional examinations a preference rating of one point for each year, or greater fraction thereof, of service in time of war, including the Korean conflict, shall be awarded in all departments of this State, institutions or agencies, to the veterans or persons named in this section; provided, that such points shall not exceed a total of 5 points. (1939, c. 8; 1953, c. 1332.)

Editor's Note.—The 1953 amendment rewrote this section.

§ 128-15.1. Section 128-15 applicable to persons serving in World War II.—All the provisions for preference rating and preference of employment to citizens who served the State or the United States honorably in either the Army, Navy, Marine Corps or Nurses' Corps in time of war and to the widows of such veterans and the wives of disabled veterans provided in § 128-15 are hereby specifically made applicable to men and women who have served, are now serving, or shall serve in any branch of the armed services, Coast Guard and Coast Guard Reserve or the Nurses' Corps during the present war, and are honorably discharged from such service, and to the widows of such veterans and the wives of disabled veterans of the present war. (1943, c. 168; 1947, c. 412.)

Editor's Note.—The 1947 amendment made this section applicable to the Coast Guard and Coast Guard Reserve.

§ 128-15.2. Appointment of acting heads of certain agencies.—In every case where a State board or commission is authorized by statute to appoint the executive head of a State agency or institution, that board or commission may appoint an acting executive head of that agency or institution to serve

- (1) During the physical or mental incapacity of the regular holder of the office to discharge the duties of his office,
- (2) During the continued absence of the regular holder of the office, or
- (3) During a vacancy in the office and pending the selection and qualification of a person to serve for the unexpired term.

An acting executive head of a State agency or institution appointed in accordance with this section may perform any act and exercise any power which a regularly selected holder of such office could lawfully perform and exercise. All powers granted to an acting executive head of a State agency or institution under this section shall expire immediately

- (1) Upon the termination of the incapacity of the officer in whose stead he acts,
- (2) Upon the return of the officer in whose stead he acts, or
- (3) Upon the selection and qualification of a person to serve for the unexpired term.

Each State board or commission may determine (after such inquiry as it deems appropriate) that the executive head of a State agency or institution whom it is authorized by statute to appoint is physically or mentally incapable of performing the duties of his office. Each such board or commission may also determine that such incapacity has terminated. (1959, c. 284, s. 1.)

Editor's Note.—Section 3 of the act inserting this section provides: "Nothing in this act shall be deemed to repeal G. S. 128-39."

ARTICLE 2.

Removal of Unfit Officers.

§ 128-16. Officers subject to removal; for what offenses.—Any judge or prosecuting attorney of any court inferior to the superior court; any justice of the peace, any sheriff, police officer, or constable, shall be removed from office by the

judge of the superior court, resident in or holding the courts of the district where said officer is resident upon charges made in writing, and hearing thereunder, for the following causes:

- (1) For willful or habitual neglect or refusal to perform the duties of his office.
- (2) For willful misconduct or maladministration in office.
- (3) For corruption.
- (4) For extortion.
- (5) Upon conviction of a felony.
- (6) For intoxication, or upon conviction of being intoxicated. (P. L. 1913, c. 761, s. 20; 1919, c. 288; C. S., s. 3208; 1959, c. 1286; 1961, c. 991.)

Cross References.—As to appropriate manner of action by which to try the title to an office, see § 1-515 and note. As to removal for receiving compensation of subordinates, see § 128-4. As to removal of sheriffs and police for laches in enforcing laws relating to intoxicating liquors see § 18-24.

Editor's Note.—The 1959 amendment inserted "any justice of the peace" in the introductory paragraph.

The 1961 amendment made other changes in the introductory paragraph.

Purpose of Statute.—The officer may be removed for misconduct or failure to perform the duties of his office, whether such failures were willful or habitually negligent; the statute was evidently enacted for the protection of the public, and not for the punishment of the delinquent officer. *State v. Hamme*, 180 N. C. 684, 104 S. E. 174 (1920).

Failure to Take Oath Does Not Exempt from Liability.—There can be no doubt that if one elected to an office takes possession of it, and engages in the exercise of its duties, and misbehaves as in this case—takes unlawful and extortionate fees—he will be liable for such misbehavior, notwithstanding the fact that he failed to take oath of office. *State v. Cansler*, 75 N. C. 442 (1876).

Sufficiency of Evidence.—The evidence of a prosecuting attorney in proceedings before the judge to remove him from office under this section is sufficient to sustain an order removing him when he admits that

he attempted to induce, and did induce, a person to violate the statutes of the State in participating in acts made an offense for immorality, etc., whatever his intent may have been therein. *State v. Hamme*, 180 N. C. 684, 104 S. E. 174 (1920), wherein it was also held that defendant could not complain because he was removed not in accordance with the specifications alleged in the petition, but upon his own evidence.

Jury Not Required.—The proceedings under this section do not require an issue to be submitted to the jury. A public office is not a property right under the provisions of the Constitution of North Carolina, art. 1, § 19. *State v. Hamme*, 180 N. C. 684, 104 S. E. 174 (1920).

Appeal from Superior Court.—An appeal from the judgment of the superior court judge that a prosecuting attorney be removed for "willful misconduct or maladministration in office," etc., is upon questions of law and legal inferences, if justified by the findings of facts supported by evidence. Constitution, art. 6, § 8; and the appeal is allowed by § 1-277. *State v. Hamme*, 180 N. C. 684, 104 S. E. 174 (1920).

Enjoining Vacating of Office by Commissioners before They Have Qualified.—An action to enjoin newly-elected county commissioners, who had not yet qualified, from declaring a public office vacant, and electing a successor, is properly dismissed as premature. *Cozart v. Fleming*, 123 N. C. 547, 31 S. E. 822 (1898).

Cited in *Swain v. Creasman*, 255 N. C. 546, 122 S. E. (2d) 358 (1961).

§ 128-17. Petition for removal; county attorney to prosecute.—The complaint or petition shall be entitled in the name of the State of North Carolina, and may be filed upon the relation of any five qualified electors of the county in which the person charged is an officer, upon the approval of the county attorney of such county, or the solicitor of the district, or by any such officer upon his own motion. It shall be the duty of the county attorney or solicitor to appear and prosecute this proceeding. (P. L. 1913, c. 761, s. 21; 1919, c. 288; C. S., s. 3209.)

Cited in *Swain v. Creasman*, 255 N. C. 546, 122 S. E. (2d) 358 (1961).

§ 128-18. Petition filed with clerk; what it shall contain; answer.—The accused shall be named as defendant, and the petition shall be signed by some elector, or by such officer. The petition shall state the charges against the accused, and may be amended, and shall be filed in the office of the clerk of the superior court of the county in which the person charged is an officer. The accused may at any time prior to the time fixed for hearing file in the office of the clerk of the superior court

his answer, which shall be verified. (P. L. 1913, c. 761, s. 22; 1919, c. 288; C. S., s. 3210.)

§ 128-19. Suspension pending hearing; how vacancy filled.—Upon the filing of the petition in the office of the clerk of the superior court, and the presentation of the same to the judge, the judge may suspend the accused from office if in his judgment sufficient cause appear from the petition and affidavit, or affidavits, which may be presented in support of the charges contained therein. In case of suspension, as herein provided, the temporary vacancy shall be filled in the manner provided by law for filling of the vacancies in such office. (P. L. 1913, c. 761, s. 23; 1919, c. 288; C. S., s. 3211.)

§ 128-20. Precedence on calendar; costs.—In the trial of the cause in the superior court the cause shall be advanced and take precedence over all other causes upon the court calendar, and shall be heard at the next term after the petition is filed, provided the proceedings are filed in said court in time for said action to be heard. The superior court shall fix the time of hearing. If the final termination of such proceedings be favorable to any accused officer, said officer shall be allowed the reasonable and necessary expense, including a reasonable attorney fee, to be fixed by the judge, he has incurred in making his defense, by the county, if he be a county officer, or by the city or town in which he holds office, if he be a city officer. If the action is instituted upon the complaint of citizens as herein provided, and it appears to the court that there was no reasonable cause for filing the complaint, the costs may be taxed against the complaining parties. (P. L. 1913, c. 761, s. 24; 1919, c. 288; C. S., s. 3212.)

ARTICLE 3.

Retirement System for Counties, Cities and Towns.

§ 128-21. Definitions.—The following words and phrases as used in this article, unless a different meaning is plainly required by the context, shall have the following meanings:

- (1) "Accumulated contribution" shall mean the sum of all amounts deducted from the compensation of a member and credited to his individual account in the annuity savings fund, together with regular interest thereon, as provided in § 128-30, subsection (b).
- (2) "Actuarial equivalent" shall mean a benefit of equal value when computed at regular interest upon the basis of such mortality tables as shall be adopted by the board of trustees.
- (3) "Annuity" shall mean payments for life derived from the accumulated contribution of a member. All annuities shall be payable in equal monthly installments.
- (4) "Annuity reserve" shall mean the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity computed at regular interest upon the basis of such mortality tables as shall be adopted by the board of trustees.
- (5) "Average final compensation" shall mean the average annual earnable compensation of an employee during his last five years of service, or if he had less than five years of service, then his average earnable compensation for his total service.
- (6) "Beneficiary" shall mean any person in receipt of a pension, an annuity, a retirement allowance or other benefit as provided by this article.
- (7) "Board of trustees" shall mean the board provided for in § 128-28 to administer the Retirement System.
- (8) "Creditable service" shall mean "prior service" plus "membership service" for which credit is allowable as provided in § 128-26.
- (9) "Earnable compensation" shall mean the full rate of the compensation

that would be payable to an employee if he worked the full normal working time, including any allowance of maintenance or in lieu thereof received by the member.

- (10) "Employee" shall mean any person who is regularly employed in the service of and whose salary or compensation is paid by the employer as defined in subdivision (2) of this section, including employees of any light and water board or commission, and full-time employees of any housing authority created and operating under and by virtue of chapter 157 of the General Statutes, whether employed or appointed for stated terms or otherwise, except teachers in the public schools and except such employees who hold office by popular election as are not required to devote a major portion of their time to the duties of their office. In all cases of doubt the board of trustees shall decide who is an employee.
- (11) "Employer" shall mean any county, incorporated city or town, the light and water board or commission of any incorporated city or town, the board of alcoholic control of any county or incorporated city or town, the North Carolina League of Municipalities, the State Association of County Commissioners, county and/or city airport authorities, housing authorities created and operated under and by virtue of chapter 157 of the General Statutes, redevelopment commissions created and operated under and by virtue of article 37, chapter 160 of the General Statutes, county and/or city or regional libraries, county and/or city boards of health, district boards of health, any other separate, local governmental entity, and the retirement system.
- (12) "Medical board" shall mean the board of physicians provided for in § 128-28, subsection (1).
- (13) "Member" shall mean any person included in the membership of the Retirement System as provided in § 128-24.
- (14) "Membership service" shall mean service as an employee rendered while a member of the Retirement System.
- (15) "Pension" shall mean payments for life derived from money provided by the employer. All pensions shall be payable in equal monthly installments.
- (16) "Pension reserve" shall mean the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed at regular interest upon the basis of such mortality tables as shall be adopted by the board of trustees.
- (17) "Prior service" shall mean the service of a member rendered before the date he becomes a member of the System, certified on his prior service certificate and allowable as provided by § 128-26.
- (18) "Regular interest" shall mean interest compounded annually at such rate as shall be determined by the board of trustees in accordance with § 128-29, subsection (b).
- (19) "Retirement" shall mean withdrawal from active service with a retirement allowance granted under the provisions of this article.
- (20) "Retirement allowance" shall mean the sum of the annuity and the pension, or any optional benefit payable in lieu thereof.
- (21) "Retirement system" shall mean the North Carolina Local Governmental Employees' Retirement System as defined in this article.
- (22) "Service" shall mean service as an employee as described in subdivision (10) of this section and paid for by the employer as described in subdivision (11) of this section.
- (23) "Year" shall mean the regular fiscal year beginning July 1, and ending June 30 in the following calendar year unless otherwise defined by regulation of the board of trustees. (1939, c. 390, s. 1; 1941, c. 357, s.

1; 1943, c. 535; 1945, c. 526, s. 1; 1947, c. 833, ss. 1, 2; 1949, c. 231, ss. 1, 2; 1949, c. 1015; 1959, c. 491, ss. 1, 2; 1961, c. 515, s. 5.)

Local Modification.—Session Laws 1945, c. 526, amending §§ 128-21, 128-22, 128-26 through 128-30 and 128-36, provides in § 9 that it shall not apply to the counties of Buncombe, Gates, Granville, Lee, New Hanover, Onslow, Randolph, Rutherford and Vance or to the cities of Henderson and Wilmington. Subsequently Session Laws 1945, cc. 1077, 1086, 1089, 1091 and 1100 made the above amendatory act applicable to Buncombe, Granville, Rutherford and Vance counties. Session Laws 1945, c. 1100, in effect makes chapter 526 applicable to Randolph County, though its title only purports to make it applicable to the city of Asheboro. Session Laws 1947, c. 15, s. 1, amended Session Laws 1945, c. 526, s. 9, by striking out the reference to the city of Henderson; and Session Laws 1947, c. 943, struck out Lee from the list of counties; and Session Laws 1951, c. 269, struck out Gates from the list of the counties; and Session Laws 1959, c. 599, struck out Onslow from the list of counties. Thus it appears that only the county of New Hanover and the city of Wilmington, are excepted from the operation of Session Laws 1945, c. 526.

Editor's Note.—The 1941 amendment made changes in subdivision (17) and also inserted the word "Local" in subdivision (21). The 1943 amendment also changed subdivision (17). The 1945 amendment rewrote subdivision (17) and the 1947 amendment inserted in subdivision (10) and (11) the clauses relating to the light and water board or commission. The first 1949 amendment made subdivision (11) applicable to housing authorities and subdivision (12) applicable to employees of such housing authorities. The second 1949 amendment inserted in subdivision (11) the following "or the board of alcoholic control of any county

or incorporated city or town."

The 1959 amendment rewrote subdivisions (11) and (23).

The 1961 amendment inserted near the end of subdivision (11) the words "any other separate, local governmental entity."

Session Laws 1947, c. 15, s. 2 made this article applicable to the city of Henderson. For act exempting from this article the uniformed employees of the fire department of the city of Charlotte, see Session Laws 1947, c. 926, amended by Session Laws 1949, c. 734, and Session Laws 1951, c. 387.

For acts relating to retirement systems for New Hanover County and the city of Wilmington, see Session Laws 1943, cc. 669, 708.

Session Laws 1953, c. 539, gave authority for the town of Morganton to withdraw from the provisions of this article.

Session Laws 1959, c. 599 made this article applicable to Onslow County and validated all acts done with respect to matters covered by Session Laws 1945, c. 526.

For comment on the 1939 enactment, see 17 N. C. Law Rev. 369. For comment on the 1941 amendment, see 19 N. C. Law Rev. 510.

Discretionary Power to Participate in Retirement System.—Where a city has become an employer participating in the State Retirement System under authority conferred by this article and by an act amending its charter, the repeal of the charter provision leaves its governing authorities with discretionary power to participate in the Retirement System under authority conferred by this article and mandamus will not lie to compel it to withdraw from the State Retirement System. *Laughinghouse v. New Bern*, 232 N. C. 596, 61 S. E. (2d) 802 (1950).

§ 128-22. Name and date of establishment.—A retirement system is hereby established and placed under the management of the board of trustees for the purpose of providing retirement allowances and other benefits under the provisions of this article for employees of those counties, cities and towns or other eligible employers participating in the said retirement system. Following the filing of the application as provided in § 128-23 (c), the board shall set a date, effective the first day of a calendar quarter, not more than ninety days thereafter, as of which date participation of the employer may begin, which date shall be known as the date of participation for such employer: Provided, that in the judgment of the board of trustees an adequate number of persons have indicated their intention to participate; otherwise at such later date as the board of trustees may set.

It shall have the power and privileges of a corporation and shall be known as the "North Carolina Local Governmental Employees' Retirement System," and by such name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held. (1939, c. 390, s. 2; 1941, c. 357, s. 2; 1943, c. 535; 1945, c. 526, s. 2; 1959, c. 491, s. 3.)

Local Modification.—New Hanover County and city of Wilmington: 1945, c. 526, s. 9.

Editor's Note.—The 1941 amendment changed the former date in the first paragraph, and inserted the word "Local" in the

second paragraph. The 1943 amendment also changed said date. Prior to the 1945 amendment the second sentence provided that the Retirement System was operative

as of July 1, 1943.

The 1959 amendment rewrote the second sentence down to the proviso.

§ 128-23. Acceptance by cities, towns and counties.—(a) The governing body of any incorporated city or town may, by resolution legally adopted and approved by the board of trustees, elect to have its employees become eligible to participate in the Retirement System, and the said municipal governing body may make the necessary appropriation therefor and if necessary levy annually taxes for payment of the same.

(b) The board of commissioners of any county may, by resolution legally adopted and approved by the board of trustees, elect to have its employees become eligible to participate in the Retirement System, and the said county board of commissioners may make the necessary appropriation therefor and if necessary levy annually taxes for payment of the same as a special purpose, in addition to any tax allowed by any special statute for the purposes enumerated in § 153-9 and in addition to the rates allowed by the Constitution.

(c) Any eligible employer desiring to participate in the Retirement System shall file with the board of trustees an application for participation under the conditions included in this article on a form approved by the board of trustees. In such application the employer shall agree to make the contributions required of participating employers, to deduct from the salaries of employees who may become members the contributions required of members under this article, and to transmit such contributions to the board of trustees. It shall also agree to make the employer's contributions for the participation in the Retirement System of all employees entering the service of the employer, after its participation begins, who shall become members.

(d) Such contributions as are made by employers shall be regarded as additions to the compensation of such employees as are members of the Retirement System and deducted therefrom for the purpose of making the employer's contribution, in addition to the deduction from the compensation of employees on account of member contributions.

(e) The agreement of such employer to contribute on account of its employees shall be irrevocable, but should an employer for any reason become financially unable to make the normal and accrued liability contributions payable on account of its employees, then such employer shall be deemed to be in temporary default. Such temporary default shall not relieve such employer from any liability for its contributions payable on account of its employees, but such contributions payable during the period of temporary default shall be paid at such later time as may be mutually agreed upon by the employer and the board of trustees together with interest thereon at the rate of six per centum (6%) per annum. At such time as such defaulted contributions together with interest thereon shall be fully paid, such employer shall no longer be deemed in temporary default and shall be restored to good standing in the Retirement System.

Notwithstanding anything to the contrary, the Retirement System shall not be liable for the payment of any pensions or other benefits on account of the employees or pensioners of any employer under this article, for which reserves have not been previously created from funds contributed by such employer or its employees for such benefits.

(f) Effective January 1, 1955, there shall be three classes of employers to be designated Class A, Class B and Class C, respectively. Each employer whose date of participation occurs before July 1, 1951, shall be a Class A employer unless such an employer by written notice filed with the board of trustees on or before June 30, 1951, elected to be a Class B employer. Each employer whose date of participation occurs on or after July 1, 1951, but before January 1, 1955, shall be a Class A employer. Each employer whose date of participation occurs on or after January 1,

1955, shall be a Class C employer. (1939, c. 390, s. 3; 1951, c. 274, s. 1; 1955, c. 1153, s. 1.)

Editor's Note.—The 1951 amendment added subsection (f). The 1955 amendment rewrote subsection (f).

§ 128-24. Membership.—The membership of this Retirement System shall be composed as follows:

- (1) All employees entering or re-entering the service of a participating county, city, or town after the date of participation in the retirement system of such county, city, or town, except that law enforcement officers, as defined in subsection (m) of § 143-166 of the General Statutes, may elect to become members of the Law Enforcement Officers' Benefit and Retirement Fund or the North Carolina Local Governmental Employees' Retirement System.
- (1a) Should any member in any period of six consecutive years after becoming a member be absent from service more than five years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member.
- (2) All persons who are employees of a participating county, city, or town except those who shall notify the board of trustees in writing, on or before ninety days following the date of participation in the retirement system by such county, city or town: Provided, that persons who are or who shall become members of any existing retirement system and who are or who may be thereby entitled to benefit by existing laws providing for retirement allowances for employees wholly or partly at the expense of funds drawn from the treasury of the State of North Carolina or of any political subdivision thereof, shall not be members: Provided, further, that employees of county welfare and health departments whose compensation is derived from federal, State, and local funds may be members of the North Carolina Local Governmental Employees' Retirement System to the full extent of their compensation.
- (3) Effective January 1, 1955, there shall be three classes of members, to be designated Class A, Class B and Class C respectively. Each member who is an employee of a Class A employer shall be a Class A member; each member who is an employee of a Class B employer shall be a Class B member; and each member who is an employee of a Class C employer shall be a Class C member.
- (4)
 - a. Notwithstanding any other provision of this chapter, any member who separates from service prior to the time he shall have attained the age of sixty years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of fifty-five years, for any reason other than death or retirement for disability as provided in G. S. 128-27, subsection (c), after completing twenty or more years of creditable service, and who leaves his total accumulated contributions in the Retirement System, shall have the right to retire on a deferred retirement allowance upon the date he shall have attained the age of sixty years, or if a uniformed policeman or fireman upon the date he shall have attained the age of fifty-five years; provided that such member may retire only upon written application to the board of trustees setting forth at what time, not less than thirty days nor more than ninety days next following the date of filing such application, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the provisions of G. S. 128-27, subsection (b), paragraphs (1), (2) and (3).
 - b. In lieu of the benefits provided in paragraph a of this subdivision

(4), any member who separates from service prior to the time he shall have attained the age of sixty years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of fifty-five years, for any reason other than death or retirement for disability as provided in G. S. 128-27, subsection (c), after completing thirty or more years of creditable service, and who leaves his total accumulated contributions in the Retirement System, may elect to retire on an early retirement allowance; provided that such a member may so retire only upon written application to the board of trustees setting forth at what time, not less than thirty days nor more than ninety days next following the date of filing such application, he desires to be retired; provided further that such application shall be duly filed within sixty days following the date of such separation. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of age sixty years, or if a uniformed policeman or fireman at the attainment of age fifty-five years, upon proper application therefor.

- c. Should an employee who retired on an early retirement allowance be restored to service prior to the time he shall have attained the age of sixty years, or if a uniformed policeman or fireman prior to the time he shall have attained the age of fifty-five years, his allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate for his class member. Upon subsequent retirement, he shall be entitled to an allowance computed, subject to the provisions of chapter 128, in accordance with such rules and regulations as the board of trustees may establish and promulgate as provided in G. S. 128-28; provided that, should such restoration occur on or after the time he shall have attained the age of fifty-five years, or if a uniformed policeman or fireman after the time he shall have attained the age of fifty years, his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration and the pension that he would have received on account of his service since his last restoration had he entered service at the time as a new entrant. (1939, c. 390, s. 4; 1941, c. 357, s. 3; 1949, cc. 1011, 1013; 1951, c. 274, s. 2; 1955, c. 1153, s. 2; 1957, c. 854; 1959, c. 491, s. 4; 1961, c. 515, s. 1.)

Local Modification.—City of Charlotte: 1949, c. 990; city of Raleigh: 1953, c. 1035.

Editor's Note.—The 1941 amendment rewrote this section. The first 1949 amendment added the exception clause in subdivision (1). The second 1949 amendment rewrote the last proviso of subdivision (2). And the 1951 amendment added subdivision (3).

Prior to the 1955 amendment there were only two classes of members set out in subdivision (3).

The 1957 amendment added subdivision (4).

The 1959 amendment inserted subdivision (1a).

The 1961 amendment changed paragraph a of subdivision (4) by deleting a former

proviso to the first sentence and also deleting a former last sentence.

Who Excluded from Membership.—The exclusion from membership in the Retirement System, as expressed in subdivision (2), will not be interpreted to apply only to those receiving retirement allowances from general funds in the State treasury derived from general taxation, but is applicable to those entitled to benefits from any funds coming into the hands of the State Treasurer by virtue of a State law. *Gardner v. Board of Trustees*, 226 N. C. 465, 38 S. E. (2d) 314 (1946).

Cited in *Hunter v. Board of Trustees*, 224 N. C. 359, 30 S. E. (2d) 384 (1944) (con. op.).

§ 128-25. Membership in System.—Should sixty per centum (60%) of the

members of any retirement, pension or annuity fund or system of any county, city or town of the State, hereafter referred to as a local pension system, elect to become members of the North Carolina Governmental Employees' Retirement System, by a petition duly signed by such members, the participation of such members in the Retirement System may be approved as provided in § 128-24 as though such local pension system were not in operation, and the provisions of this article shall also apply, except that the existing pensioners or annuitants of the local pension system who were being paid pensions on the date of the approval shall be continued and paid at their existing rates by the North Carolina Governmental Employees' Retirement System, and the liability on this account shall be included in the computation of the accrued liability by the actuary as provided by § 128-30, subsection (d). Any cash and securities to the credit of the local pension system shall be transferred to the North Carolina Governmental Employees' Retirement System as of the date of the approval. The trustees or other administrative head of the local pension system as of the date of the approval shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the members, and the relative shares of the members as of that date. Such shares shall be credited to the respective annuity savings accounts of such members in the North Carolina Governmental Employees' Retirement System. The balance of the funds transferred to the North Carolina Governmental Employees' Retirement System shall be offset against the accrued liability before determining the special accrued liability contribution to be paid by the county, city or town as provided by § 128-30, subsection (d). The operation of the local pension system shall be discontinued as of the date of the approval. (1939, c. 390, s. 5; 1941, c. 357, s. 4.)

Cited in *Dillon v. Wentz*, 227 N. C. 117,
41 S. E. (2d) 202 (1947).

§ 128-26. Allowance for service.—(a) Under such rules and regulations as the board of trustees shall adopt each member who was an employee at any time during the year immediately preceding the date of participation of his employer, and who becomes a member during the first year thereafter, shall file a detailed statement of all service as an employee rendered by him to his employer prior to such date of participation for which he claims credit.

(b) The board of trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all service in one calendar year.

(c) Subject to the above restrictions and to such other rules and regulations as the board of trustees may adopt, the board of trustees shall verify, as soon as practicable after the filing of such statements of service, the service therein claimed.

In lieu of a determination of the actual compensation of the members that was received during such period of prior service, the board of trustees may use for the purpose of this article the compensation rates which if they had progressed with the rates of salary increase shown in the tables as prescribed in subsection (o) of § 128-28 would have resulted in the same average salary of the member for the five years immediately preceding the date of participation of his employer, as the records show the member actually received.

(d) Upon verification of the statements of service the board of trustees shall issue prior service certificates certifying to each member the length of service rendered prior to the date of participation of his employer, with which he is credited on the basis of his statement of service. So long as membership continues a prior service certificate shall be final and conclusive for retirement purposes as to such service: Provided, however, that any member may, within one year from the date of issuance or modification of such certificate, request the board of trustees to modify or correct his prior service certificate.

When membership ceases, such prior service certificates shall become void. Should the employee again become a member, such employee shall enter the System

as an employee not entitled to prior service credit except as provided in § 128-27, subsection (e), paragraph (2).

(e) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of the service certified on his prior service certificate.

(f) Effective January 1, 1955, there shall be three classes of prior service certificates, to be designated as Class A, Class B and Class C respectively. Each such certificate issued on account of service rendered to a Class A employer shall be a Class A prior service certificate; each such certificate issued on account of service rendered to a Class B employer shall be a Class B prior service certificate; and each such certificate issued on account of service rendered to a Class C employer shall be a Class C prior service certificate. Each Class C prior service certificate shall specify a prior service benefit percentage rate which shall be three per centum (3%) in the case of any member entitled to such certificate who is, at the date of participation of his employer, in a position covered by the Social Security Act under a federal-State agreement and which shall be five per centum (5%) in the case of a member entitled to such certificate but who at the date of participation of his employer is in a position not so covered. (1939, c. 390, s. 6; 1941, c. 357, s. 5; 1943, c. 535; 1945, c. 526, s. 3; 1951, c. 274, s. 3; 1955, c. 1153, s. 3.)

Local Modification.—New Hanover County and city of Wilmington: 1945, c. 526, s. 9.

Editor's Note.—The 1941, 1943 and 1945 amendments made changes in subsections

(a), (c) and (d). And the 1951 amendment added subsection (f). Prior to the 1955 amendment there were only two classes of members referred to in subsection (f).

§ 128-27. Benefits.—(a) Service Retirement Benefits.—

- (1) Any member in service may retire upon written application to the board of trustees setting forth at which time, not less than thirty days nor more than ninety days subsequent to the execution and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of sixty years, or if a uniformed policeman or fireman he shall have attained the age of fifty-five years, and notwithstanding that, during such period of notification, he may have separated from service.
- (2) Any member in service who has attained the age of sixty-five shall be retired at the end of the fiscal year unless the employing board requests such person to remain in the service, and notice of this request is given in writing thirty days prior to the end of the fiscal year.
- (3) Any member in service who has attained the age of seventy years shall be retired forthwith: Provided, that with the approval of his employer he may remain in service until the end of the fiscal year following the date on which he attains the age of seventy years; Provided, further that with the approval of the board of trustees and his employer, any member who has attained or shall attain the age of seventy years may be continued in service for a period of two years following each such request.

(b) Service Retirement Allowances of Persons Retiring before July 1, 1959.—Upon retirement from service before July 1, 1959, a member shall receive a service retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and
- (2) A pension equal to the annuity allowable at the age of sixty years or at the actual age of retirement if prior thereto, computed on the basis of contributions made prior to the attainment of age sixty; and
- (3) If he has a prior service certificate in full force and effect, an additional

pension which shall be equal to the annuity which would have been provided at the age of sixty years (60), or at the actual age of retirement if prior thereto, by twice the contributions which he would have made during such period of service had the system been in operation and he contributed thereunder at the rate of five per centum (5%) of his compensation if such certificate is a Class A certificate, or at the rate of four per centum (4%) of his compensation if such certificate is a Class B certificate, or at the prior service benefit percentage rate specified therein if such certificate is a Class C certificate.

(b1) Service Retirement Allowances of Person Retiring on or after July 1, 1959.—Upon retirement from service on or after July 1, 1959, a member shall receive a service retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and
- (2) A pension equal to the annuity allowable at the age of sixty-five years or at his retirement age, whichever is the earlier, on the basis of contributions made prior to such earlier age; and
- (3) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to (the sum of) the annuity which would have been provided at the age of sixty-five years, or at the earlier age of retirement if prior thereto, by twice the contributions which he would have made during such period of service had the system been in operation and he contributed thereunder at the rate of
 - a. Six and twenty-five hundredths per centum (6.25%) of his compensation if such certificate is a Class A certificate, or
 - b. Five per centum (5%) of his compensation if such certificate is a Class B certificate, or
 - c. Four per centum (4%) of his compensation if such certificate is a Class C certificate.

(c) Disability Retirement Benefits.—Upon the application of a member in service or of his employer, any member who has had ten or more years of creditable service may be retired by the board of trustees, not less than thirty and not more than ninety days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired.

(d) Allowance on Disability Retirement.—Upon retirement for disability a member shall receive a service retirement allowance, if he has attained the age of sixty years, otherwise he shall receive a disability retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of the retirement;
- (2) A pension equal to seventy-five per centum of the pension that would have been payable upon service retirement at the age of sixty-five years had the member continued in service to the age of sixty-five years without further change in compensation; and

(e) Re-Examination of Beneficiaries Retired on Account of Disability.—Once each year during the first five years following retirement of a member on a disability allowance, and once in every three year period thereafter, the board of trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of sixty years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by a physician or physicians designated by the board of trustees. Should any disability beneficiary who has not yet attained the age of sixty years refuse to submit to at least one medical examination in any such year by a physician

or physicians designated by the board of trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all his rights in and to his pension may be revoked by the board of trustees.

- (1) Should the medical board report and certify to the board of trustees that such disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and the average final compensation, and should the board of trustees concur in such report, then the amount of his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, shall equal the amount of his average final compensation. Should his earning capacity be later changed, the amount of his pension may be further modified: Provided, that the new pension shall not exceed the amount of the pension originally granted nor an amount which, when added to the amount earnable by the beneficiary together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation shall not become a member of the Retirement System.
- (2) Should a disability beneficiary under the age of sixty years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the contribution rate in effect for a Class A or Class B member, whichever is applicable during his subsequent membership service. Any prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of fifty years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration after June 30, 1951, and the pension that he would have received on account of his service since such last restoration had he entered service at that time as a new entrant.

(f) Return of Accumulated Contributions.—Should a member cease to be an employee except by death or retirement under provisions of this chapter, he shall be paid upon his request the sum of his contributions and one half of the accumulated interest thereon; provided that, if the member at the time of separation from service shall have attained the age of sixty years or is otherwise entitled to a retirement allowance under this chapter, he shall be paid the amount of his accumulated contributions plus the full amount of his accumulated regular interest thereon. Upon payment of such sum his membership in the system shall cease and, if he thereafter again becomes a member, no credit shall be allowed for any service previously rendered; and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Should a member or a former member die before retirement the amount of his accumulated contributions standing to the credit of his individual account shall be paid to his estate or to such person as he shall have nominated by written designation, duly executed and filed with the board of trustees. Notwithstanding any other provision of chapter 128, there shall be deducted from any amount otherwise payable hereunder any amount due any participating employer by the member by reason of any outstanding overpayment of salary or by reason of the embezzlement of fees collected by the member for any participating employer; provided that, notwithstanding any other provisions of this chapter, even if the member fails to demand the return of his accumulated contributions within ninety days from the day he ceases to be an employee, any amount due such participating employer by reason of any outstand-

ing overpayment of salary or embezzlement of fees shall be paid to such participating employer upon demand; provided, further, that such participating employer shall have notified the executive secretary of any amount so due and that the Retirement System shall have no liability for amounts so deducted and transmitted to such participating employer nor for any failure by the Retirement System for any reason to make such deductions.

(g) **Optional Allowance.**—With the provision that no optional election shall be effective in case the beneficiary dies within thirty days after retirement and prior to his attainment of age sixty-five or within thirty days after the date such election is made if such date is after his attainment of age sixty-five, until the first payment on account of any benefit becomes normally due, any member may elect to receive his benefit in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of such retirement allowance in a reduced allowance payable throughout life under the provisions set forth in Option one, two or three below. Neither the election of Option two or three nor the nomination of the person thereunder may be revoked or changed by the member after such option election has become effective, but if such person nominated dies prior to the date the first payment of such benefit becomes normally due the election shall thereby be revoked. Any member dying in service after his optional election has become effective shall be presumed to have retired on the date of his death.

Option one. If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees; or

Option two. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option three. Upon his death, one half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option four. Adjustment of Retirement Allowances for Social Security Benefits.—Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that, with his benefit under Title II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after he attains age sixty-five (65). A member who makes an election in accordance with this option shall be deemed to have made a further election of Option one above.

(h) Until June 30, 1951, all benefits payable to or on account of any beneficiary retired before such date shall be computed on the basis of the provisions of chapter 128 as they existed at the date of establishment of the Retirement System. On and after July 1, 1951, all such benefits shall be adjusted to take into account, under such rules as the board of trustees may adopt, the provisions of chapter 128 and all amendments thereto in effect on July 1, 1951, and no further contributions on account of such adjustments shall be required of such beneficiaries. The board of trustees may authorize such transfers of reserves between the funds of the Retirement System as may be required on account of such adjustments.

(i) No action shall be commenced against the State on the Retirement System by any retired member or beneficiary respecting any deficiency in the payment of benefits more than three years after such deficient payment was made, and no action shall be commenced by the State or the Retirement System against any retired member or former member or beneficiary respecting any overpayment of benefits or contributions more than three years after such overpayment was made. (1939, c.

390, s. 7; 1945, c. 526, s. 4; 1951, c. 274, ss. 4-6; 1955, c. 1153, ss. 4-6; 1957, c. 855, ss. 1-4; 1959, c. 491, ss. 5-8; 1961, c. 515, ss. 2, 6, 7.)

Local Modification.—New Hanover County and city of Wilmington: 1945, c. 526, s. 9.

Editor's Note.—The 1945 amendment made changes in paragraph (1) of subsection (a) and paragraphs (2) and (3) of subsection (b). The 1951 amendment added that part of paragraph (3) of subsection (b) beginning with the words "at the rate." The 1951 amendment also rewrote paragraph (2) of subsection (e) and added subsection (i).

The 1955 amendment rewrote paragraph (3) of subsection (b), added paragraph (3) of subsection (d), since deleted, and added the first sentence of subsection (h).

The 1957 amendment rewrote the second sentence of subsection (f) and added the third sentence thereto. It also rewrote the portion of subsection (g) preceding the

words "Option one" and added the second sentence of subsection (h).

The 1959 amendment rewrote the introductory paragraph of subsection (b), inserted subsection (b1), struck out the first sentence of subsection (f) and inserted the first two sentences in lieu thereof. The amendment struck out the subject matter of former "Option four" of subsection (g) and inserted in lieu thereof the subject matter of former subsection (h). It also redesignated former subsection (i) as (h).

The 1961 amendment substituted "sixty-five" for "sixty" in subdivision (2) of subsection (d), and deleted former subdivision (3) therefrom. It also added the proviso to the present first sentence of subsection (f), rewrote the last sentence of subsection (f) and added present subsection (i).

§ 128-28. Administration and responsibility for operation of System.—(a) Vested in Board of Trustees.—The general administration and responsibility for the proper operation of the Retirement System and for making effective the provisions of this article are hereby vested in the board of trustees: Provided, that all expenses in connection with the administration of the North Carolina Local Governmental Employees' Retirement System shall be charged against and paid from the expense fund as provided in subsection (f) of § 128-30.

(b) Board of Trustees a Body Politic and Corporate; Powers and Authority; Exemption from Taxation.—The board of trustees shall be a body politic and corporate under the name Board of Trustees of the North Carolina Local Governmental Employees' Retirement System, and as a body politic and corporate shall have the right to sue and be sued, shall have perpetual succession and a common seal, and in said corporate name shall be able and capable in law to take, demand, receive and possess all kinds of real and personal property necessary and proper for its corporate purposes, and to bargain, sell, grant, alien, or dispose of all such real and personal property as it may lawfully acquire. All such property owned or acquired by said body politic and corporate shall be exempt from all taxes imposed by the State or any political subdivision thereof, and shall not be subject to income taxes.

(c) Members of Board.—The board shall consist of the board of trustees of the Teachers' and State Employees' Retirement System, and two local governmental officials designated by the Governor. One local governmental official shall be a mayor, a member of the governing body, or a full-time officer of a city or town participating in the Retirement System, and one local governmental official shall be a county commissioner or a full-time officer of a county participating in the Retirement System. The Governor shall designate these two local governmental officers on April 1 of years in which an election is held for the office of Governor, or as soon thereafter as possible, and the two local governmental officials designated by the Governor shall serve on the board in addition to the regular duties of their city, town, or county office: Provided that if for any reason any local governmental official so designated vacates the city, town, or county office which he held at the time of this designation, the Governor shall designate some other local governmental official to serve until the next regular date for the designation of local governmental officials to serve on the board.

(d) Compensation of Trustees.—The trustees shall be paid seven dollars (\$7.00) per day during sessions of the board and shall be reimbursed from the expense

appropriation for all necessary expenses that they may incur through service on the board.

(e) Oath.—Each trustee other than the ex officio members shall, within ten days after his appointment, take an oath of office, that, so far as it devolves upon him, he will diligently and honestly administer the affairs of the said board, and that he will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the Retirement System. Such oath shall be subscribed to by the member making it, and certified by the officer before whom it is taken, and immediately filed in the office of the Secretary of State: Provided, that where a local governmental official designated by the Governor has taken an oath of office in connection with the local governmental office that he holds, the oath for his local governmental office shall be deemed to be sufficient, and he shall not be required to take the oath hereinabove provided.

(f) Voting Rights.—Each trustee shall be entitled to one vote in the board. Five affirmative votes shall be necessary for a decision by the trustees at any meeting of said board.

(g) Rules and Regulations.—Subject to the limitations of this chapter, the board of trustees shall, from time to time, establish rules and regulations for the administration of the funds created by this chapter and for the transaction of its business. The board of trustees shall also, from time to time, in its discretion, adopt rules and regulations to prevent injustices and inequalities which might otherwise arise in the administration of this chapter.

(h) Officers and Other Employees, Salaries and Expenses.—The board of trustees shall elect from its membership a chairman, and shall, by a majority vote of all the members, appoint a secretary, who may be, but need not be, one of its members. The board of trustees shall engage such actuarial and other service as shall be required to transact the business of the Retirement System. The compensation of all persons engaged by the board of trustees, and all other expenses of the board necessary for the operation of the Retirement System, shall be paid at such rates and in such amounts as the board of trustees shall approve.

(i) Actuarial Data.—The board of trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the Retirement System, and for checking the experience of the System.

(j) Record of Proceedings; Annual Report.—The board of trustees shall keep a record of all of its proceedings which shall be open to public inspection. It shall publish annually a report showing the fiscal transactions of the Retirement System for the preceding year, the amount of the accumulated cash and securities of the System, and the last balance sheet showing the financial condition of the System by means of an actuarial valuation of the assets and liabilities of the Retirement System.

(k) Legal Adviser.—The Attorney General shall be the legal adviser of the board of trustees.

(l) Medical Board.—The board of trustees shall designate a medical board to be composed of three physicians not eligible to participate in the Retirement System. If required, other physicians may be employed to report on special cases. The medical board shall arrange for and pass upon all medical examinations required under the provisions of this chapter, and shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the board of trustees its conclusion and recommendations upon all the matters referred to it.

(m) Duties of Actuary.—The board of trustees shall designate an actuary who shall be the technical adviser of the board of trustees on matters regarding the operation of the funds created by the provisions of this chapter and shall perform such other duties as are required in connection therewith.

(n) Immediately after the establishment of the Retirement System the actuary shall make such investigation of the mortality, service and compensation experience

of the members of the System as he shall recommend and the board of trustees shall authorize, and on the basis of such investigation he shall recommend for adoption by the board of trustees such tables and such rates as are required in subsection (o), paragraphs (1) and (2), of this section. The board of trustees shall adopt tables and certify rates, and as soon as practicable thereafter the actuary shall make a valuation based on such tables and rates of the assets and liabilities of the funds created by this chapter.

(o) In the year one thousand nine hundred and forty-five, and at least once in each five-year period thereafter, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the Retirement System, and shall make a valuation of the assets and liabilities of the funds of the System, and taking into account the result of such investigation and valuation, the board of trustees shall:

- (1) Adopt for the Retirement System such mortality, service and other tables as shall be deemed necessary; and
- (2) Certify the rates of contributions payable by the participating units on account of new entrants at various ages.

(p) On the basis of such tables as the board of trustees shall adopt, the actuary shall make an annual valuation of the assets and liabilities of the funds of the System created by this chapter. (1939, c. 390, s. 8; 1941, c. 357, s. 6; 1945, c. 526, s. 7; 1961, c. 515, ss. 3, 4.)

Local Modification.—New Hanover County and city of Wilmington: 1945, c. 526, s. 9.

ments rewrote this section.

The 1961 amendment rewrote subsection (c) and added the proviso to subsection (e).

Editor's Note.—The 1941 and 1945 amend-

§ 128-29. Management of funds.—(a) Vested in Board of Trustees.—The board of trustees shall be the trustee of the several funds created by this article as provided in G. S. 128-30, and shall have full power to invest and reinvest such funds in any of the following:

- (1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;
- (2) Obligations of the Federal Intermediate Credit Banks, Federal Home Loan Banks, Federal National Mortgage Association, Banks for Co-operatives, and Federal Land Banks;
- (3) Obligations of the State of North Carolina;
- (4) General obligations of other states of the United States;
- (5) General obligations of cities, counties and special district in North Carolina;
- (6) Obligations of any corporation within the United States if such obligations bear either of the three highest ratings of at least two nationally recognized rating services; and
- (7) Notes secured by mortgages on real estate located within the State of North Carolina and insured by the Federal Housing Commissioner, or his successor or assigns, or in debentures issued by such Commissioner, which are guaranteed as to principal and interest by the United States or by the Federal Housing Administration, an agency of the United States Government, or by some other agency of the United States Government.
- (8) Shares of any building and loan association organized under the laws of this State or of any federal savings and loan association having its principal office in this State, to the extent that such investment is insured by the federal government or an agency thereof.

Subject to the limitations set forth above, said trustees shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and any moneys belonging to said funds.

(b) Annual Allowance of Regular Interest.—The board of trustees annually shall allow regular interest on the mean amount for the preceding year in each of the funds with the exception of the expense fund. The amounts so allowed shall be due and payable to said funds, and shall be annually credited thereto by the board of trustees from interest and other earnings on the moneys of the Retirement System. Any additional amount required to meet the interest on the funds of the Retirement System shall be paid from the pension accumulation fund, and any excess of earnings over such amount required shall be paid to the pension accumulation fund. Regular interest shall mean interest at the rate of four per centum per annum with respect to all calculations and allowances on account of members' contributions and at the rate of three per centum per annum with respect to employers' contributions, with the right reserved to the board of trustees to set a different rate or rates from time to time.

(c) Custodian of Funds.—The State Treasurer shall be the custodian of the several funds. All payments from said funds shall be made by him only upon vouchers signed by two persons designated by the board of trustees. The secretary of the board of trustees shall furnish said board a surety bond in a company authorized to do business in North Carolina in such amount as shall be required by the board, the premium to be paid from the expense fund.

(d) Cash Deposits for Meeting Disbursements.—For the purpose of meeting disbursements for pensions, annuities and other payments there may be kept available cash, not exceeding ten per centum of the total amount in the several funds of the Retirement System, on deposit in one or more banks or trust companies of the State of North Carolina, organized under the laws of the State of North Carolina, or of the United States: Provided, that the sum on deposit in any one bank or trust company shall not exceed twenty-five per centum of the paid up capital and surplus of such bank or trust company.

(e) Selection of Depositories.—The board of trustees shall select a bank or banks for the deposits of the funds and securities of the Retirement System in the same manner as such banks are selected by the Treasurer of the State of North Carolina. Such banks selected shall be required to conform to the law governing banks selected by the State. The funds and properties of the North Carolina Governmental Employees' Retirement System held in any bank of the State shall be safeguarded by a fidelity and surety bond, the amount to be determined by the board of trustees.

(f) Immunity of Funds.—Except as otherwise herein provided, no trustee and no employee of the board of trustees shall have any direct interest in the gains or profits of any investment made by the board of trustees, nor as such receive any pay or emolument for this service. No trustee or employee of the board shall, directly or indirectly, for himself or as an agent in any manner use the same, except to make such current and necessary payments as are authorized by the board of trustees; nor shall any trustee or employee of the board of trustees become an endorser or surety or in any manner an obligor for moneys loaned or borrowed from the board of trustees. (1939, c. 390, s. 9; 1941, c. 357, s. 7; 1945, c. 526, s. 5; 1957, c. 846, s. 1; 1959, c. 1181, s. 1; 1961, c. 397.)

Local Modification.—New Hanover County and city of Wilmington: 1945, c. 526, s. 9.

Editor's Note.—The 1941 amendment substituted in subsection (c) the words "State Treasurer" for the words "secretary-treasurer of the board of trustees," and the word "secretary" for "secretary-treasurer." The 1945 amendment rewrote the last sentence

of subsection (b).

The 1957 amendment rewrote subsection (a).

The 1959 amendment added subdivision (8) of subsection (a).

The 1961 amendment changed subsection (a) by substituting "three" for "two" in line two of subdivision (6) and rewriting subdivision (7).

§ 128-29.1. Authority to invest in certain common and preferred stocks.—In addition to all other powers of investment, the board of trustees, within the limita-

tions set forth in this section, is also authorized to invest Retirement System funds in stocks, preferred or common, issued or guaranteed by a corporation created or existing under the laws of the United States or any state, district, or territory thereof, provided;

- (1) That for a period of five fiscal years for which the necessary statistical data are available next preceding the date of investment, such corporation as disclosed by its published fiscal annual statements shall have had an average annual net income plus its average annual fixed charges (as herein used, fixed charges shall mean interest on funded or unfunded debt, contingent interest charges, amortization of debt discount and expense and rentals for leased property and, in the case of consolidated earnings statements of parent and subsidiary corporations shall include all fixed charges and preferred dividend requirement, if any, of the subsidiaries) at least equal to one and one-half times the sum of its average annual dividend requirement for preferred stock and its average annual fixed charges for the same period; however, during neither of the last two years of such period shall the sum of its annual net income and its annual fixed charges have been less than one and one-half times the sum of its dividend requirements for preferred stock and its fixed charges for the same period;
- (2) That such corporation shall have no arrears of dividends on its preferred stock;
- (3) That such common stock is registered on a national securities exchange as provided in the Federal Securities Exchange Act, but such registration shall not be required of the following stocks:
 - a. The common stock of a bank which is a member of Federal Deposit Insurance Corporation and has capital funds, represented by capital, surplus and undivided profits, of at least twenty million dollars (\$20,000,000.00);
 - b. The common stock of a life insurance company which has capital funds represented by capital, special surplus funds and unassigned surplus, of at least fifty million dollars (\$50,000,000.00);
 - c. The common stock of a fire or casualty insurance company, or a combination thereof, which has capital funds represented by capital, net surplus and voluntary reserves, of at least fifty million dollars (\$50,000,000.00);
- (4) That the preferred stock of such corporation, if any be outstanding, shall qualify for investment under this section;
- (5) That such corporation, having no preferred stock outstanding, shall have had earnings for the five fiscal years next preceding the date of investment of at least twice the interest on all mortgages, bonds, debentures, and funded debts, if any, after deduction of the proper charges for replacements, depreciation, and obsolescence;
- (6) That such corporation shall have paid a cash dividend on its common stock in each year of the ten-year period next preceding the date of investment and the aggregate net earnings available for dividends on the common stock of such corporation for the whole of such period shall have been at least equal to the amount of such dividends paid;
- (7) That in applying the earnings test under this section to any issuing, assuming, or guaranteeing corporation, where such corporation shall have acquired its property or any substantial part thereof within a five-year period immediately preceding the date of investment by consolidation, merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, or shall have acquired the assets of any unincorporated business enterprise by purchase or otherwise, net income, fixed charges and preferred dividends of the several

predecessor or constituent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or not the applicable requirements of this section have been complied with;

- (8) That the total value of common and preferred stocks shall not exceed ten per centum of the total value of all invested funds of the Retirement System; provided, further:
- a. Not more than one and one-half per centum of the total value of such funds shall be invested in the stock of a single corporation, and provided further;
 - b. The total number of shares in a single corporation shall not exceed eight per centum of the issued and outstanding stock of such corporation, and provided further;
 - c. Not more than one and one-half per centum of the total value of such funds shall be invested in stocks during any year;
 - d. As used in this subdivision (8), value shall consist of the par value or unpaid balance of all unmatured or unpaid investments requiring the payment of a fixed amount at payment date and the cost price of all other investments.

In order to carry out the duties and exercise the powers imposed and granted by this section, the chairman of the board of trustees is authorized to appoint an investment committee consisting of five members, three of whom shall be members of the board of trustees designated ex officio by the chairman and two of whom shall not be members of the board. Such investment committee shall have such powers and duties as the board of trustees may prescribe. The members of the investment committee shall receive for their services the same per diem and other allowances as are granted the members of State boards and commissions generally. (1961, c. 626.)

Editor's Note.—The act inserting this section is effective as of July 1, 1961.

§ 128-30. Method of financing.—(a) Funds to Which Assets of Retirement System Credited.—All of the assets of the Retirement System shall be credited according to the purpose for which they are held to one of five funds, namely, the annuity savings fund, the annuity reserve fund, the pension accumulation fund, the pension reserve fund and the expense fund.

(b) Annuity Savings Fund.—The annuity savings fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their annuities. Contributions to and payment from the annuity savings fund shall be made as follows:

- (1) Prior to July 1, 1951, each participating employer shall cause to be deducted from the salary of each member on each and every payroll of such employer for each and every payroll period four per centum (4%) of his earnable compensation. On and after such date the rate so deducted shall be five per centum (5%) in the case of a Class A member or a Class C member, and four per centum (4%) in the case of a Class B member; provided, however, that with respect to any member who is covered under the Social Security Act in accordance with the agreement entered into during 1955 in accordance with the provisions of article 2 of chapter 135 of Volume 3B of the General Statutes, as amended, such deduction shall, commencing with the first day of the period of service with respect to which such agreement is effective, be at the rate of three per centum (3%) of the part of his actual compensation not in excess of the amount taxable to him under the Federal Insurance Contributions Act as from time to time in effect plus five per centum (5%) of the part of his actual compensation not so taxable; provided that in the case of any member so eligible and receiving com-

- compensation from two or more employers such deductions may be adjusted under such rules as the board of trustees may establish so as to be as nearly equivalent as practicable to the deductions which would have been made had the member received all of such compensation from one employer. Notwithstanding the foregoing, the board of trustees may in its discretion cause such portion as it may determine of deductions made between January 1, 1955 and December 1, 1955, to be transferred into the contribution fund established under G. S. 135-24; such amounts so transferred shall in that event be deemed to be taxes contributed by employees as required under article 2 of chapter 135 of Volume 3B of the General Statutes, as amended, and shall be in lieu of contributions otherwise payable in the same amount as so required. But the employer shall not have any deduction made for annuity purposes from the compensation of a member who elects not to contribute if he has attained the age of sixty (60) years and has completed thirty-five (35) years of service. In determining the amount earned by a member whose compensation is derived partly or wholly from fees, such member shall submit a sworn statement to his employer monthly, or at least quarterly, each year as to the amount of fees received by such member as compensation during the period, and each month, or at least quarterly, such member shall pay to his employer the proper per centum of such compensation received from fees, which shall be considered as deductions by the employer as provided in subdivisions (1) and (2) of this subsection.
- (2) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this article. The employer shall certify to the board of trustees on each and every payroll or in such other manner as the board of trustees may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said annuity savings fund, and shall be credited, together with regular interest thereon to the individual account of the member from whose compensation said deduction was made.
- (3) In addition to the contributions deducted from compensation as hereinbefore provided, subject to the approval of the board of trustees, any member may redeposit in the annuity savings funds by a single payment or by an increased rate of contribution an amount equal to the total amount which he previously withdrew therefrom as provided in this article, or any part thereof; or any member may deposit therein by a single payment or by an increased rate of contribution an amount computed to be sufficient to purchase an additional annuity, which, together with his prospective retirement allowance, will provide for him a total retirement allowance of not to exceed one half of his average final compensation at age sixty. Such additional amounts so deposited shall become a part of his accumulated contributions except in the case of retirement, when they shall be treated as excess contributions returnable to the member in cash or as an annuity of equivalent actuarial value and shall not be considered in computing his pension. The accumulated contributions of a member drawn by him, or paid to his estate or to his designated beneficiary in event of his death as provided in this article, shall be paid from the annuity savings fund. Upon the retirement of a

member his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

(c) **Annuity Reserve Fund.**—The annuity reserve fund shall be the fund in which shall be held the reserves on all annuities in force and from which shall be paid all annuities and all benefits in lieu of annuities, payable as provided in this article. Should a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

(d) **Pension Accumulation Fund.**—The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contributions made by employers and from which shall be paid all pensions and other benefits on account of members with prior service credit. Contributions to and payments from the pension accumulation fund shall be made as follows:

- (1) Each participating employer shall pay to the pension accumulation fund monthly, or at such other intervals as may be agreed upon with the board of trustees, an amount equal to a certain percentage of the actual compensation of each member, to be known as the "normal contribution" and an additional amount equal to a percentage of his actual compensation to be known as the "accrued liability contribution." The rate per centum of such contributions shall be fixed on the basis of the liabilities of the Retirement System as shown by actuarial valuation. Until the first valuation for any employer whose participation commenced prior to July 1, 1951, the normal contribution shall be three per cent (3%) for general employees and five per cent (5%) for firemen and policemen, and the accrued liability contribution shall be three per cent (3%) for general employees and six per cent (6%) for firemen and policemen. Until the first valuation for any employer whose participation commenced on or after July 1, 1951, the normal contribution shall be four per cent (4%) for general employees and six and two-thirds per cent ($6\frac{2}{3}\%$) for firemen and policemen, and the accrued liability contribution shall be four per cent (4%) for general employees and eight per cent (8%) for firemen and policemen.
- (2) On the basis of regular interest and of such mortality and other tables as shall be adopted by the board of trustees, the actuary engaged by the board to make each valuation required by this article during the period over which the accrued liability contribution is payable, immediately after making such valuation, shall determine the uniform and constant percentage of the actual compensation of the average new entrant throughout his entire period of active service which would be sufficient to provide for the payment of any pension payable on his account and for the prorata share of the cost of administration of the Retirement System. The rate per centum so determined shall be known as the "normal contribution" rate. After the accrued liability contribution has ceased to be payable, the normal contribution rate shall be the rate per centum of the earnable salary of all members obtained by deducting from the total liabilities of the pension accumulation fund the amount of the funds in hand to the credit of that fund and dividing the remainder by one per centum of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the board of trustees and regular interest. The normal rate of contribution shall be determined by the actuary after each valuation.
- (3) The "accrued liability contribution" shall be set for each employer on the basis of the prior service credits allowable to the employees thereof, who

are entitled to prior service certificates, and shall be paid for a period of approximately thirty years, provided that the length of the period of payment for each employer after contributions begin shall be the same for all employers and shall be determined by the board of trustees as the result of actuarial valuations.

- (4) At the end of the first year following the date of participation for each employer, the accrued liability payable by such employer shall be set, by deducting from the present value of the total liability for all pensions payable on account of all members and pensioners of the System who became participants through service for such employer, the present value of the future normal contributions payable, and the amount of any assets resulting from any contributions previously made by such employer. Then the "accrued liability contribution" rate for such employer shall be the per centum of the total annual compensation of all members employed by such employer which is equivalent to four per centum (4%) of the amount of such accrued liability. The expense of making such actuarial valuation to determine the accrued liability contribution for each employer shall be paid by such employer. The accrued liability contribution rate shall be increased on the basis of subsequent valuation if benefits are increased over those included in the valuations on the basis of which the original accrued liability contribution rate was determined.
- (5) The total amount payable in each year to the pension accumulation fund shall not be less than the sum of the rate per centum known as the normal contribution rate and the accrued liability contribution rate of the total earned compensation of all members during the preceding year: Provided, however, that the amount of each annual accrued liability contribution shall be at least three per centum greater than the preceding annual accrued liability payment, and that the aggregate payment by employers shall be sufficient, when combined with the amount in the fund, to provide the pensions and other benefits payable out of the fund during the year then current.
- (6) The accrued liability contribution shall be discontinued as soon as the accumulated reserve in the pension accumulation fund shall equal the present value, as actuarially computed and approved by the board of trustees, of the total liability of such fund less the present value, computed on the basis of the normal contribution rate then in force, of the prospective normal contributions to be received on account of all persons who are at that time members.
- (7) All pensions, and benefits in lieu thereof, with the exception of those payable on account of members who received no prior service allowance, payable from contributions of employers, shall be paid from the pension accumulation fund.
- (8) Upon the retirement of a member not entitled to credit for prior service, an amount equal to his pension reserve shall be transferred from the pension accumulation fund to the pension reserve fund.
- (e) Pension Reserve Fund.—The pension reserve fund shall be the fund in which shall be held the reserves of all pensions granted to members not entitled to credit for prior service and from which such pensions and benefits in lieu thereof shall be paid. Should such a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement the pension thereon shall be transferred from the pension reserve fund to the pension accumulation fund. Should the pension of such disability beneficiary be reduced as a result of an increase in his earning capacity, the amount of the annual reduction in his pension shall be paid annually into the pension accumulation fund during the period of such reduction.

(f) **Expense Fund.**—The expense fund shall be the fund from which the expenses of the administration of the Retirement System shall be paid, exclusive of amounts payable as retirement allowances and as other benefits provided herein. Contribution shall be made to the expense fund as follows:

- (1) The board of trustees shall determine annually the amount required to defray such administrative expenses for the ensuing fiscal year and shall adopt a budget in accordance therewith. The budget estimate of such expenses shall be paid to the expense fund from the pension accumulation fund.
- (2) For the purpose of organizing the Retirement System and establishing an office, the board of trustees may provide as a prerequisite to participation in the Retirement System that each participating employer or employee or both shall pay an additional contribution to the Retirement System for the expense fund not to exceed two dollars for each employee, such contribution of the employee to be credited to his individual account in the annuity savings fund at such later time as the board of trustees shall determine, and/or the board of trustees may borrow such amounts as may be necessary to organize and establish the Retirement System.

(g) **Collection of Contributions.**—

- (1) The collection of members' contributions shall be as follows:

- a. Each employer shall cause to be deducted on each and every payroll of a member for each and every payroll subsequent to the date of participation in the Retirement System the contributions payable by such member as provided in this article. Each employer shall certify to the treasurer of said employer on each and every payroll a statement as vouchers for the amount so deducted.
- b. The treasurer of each employer on the authority from the employer shall make deductions from salaries of members as provided in this article and shall transmit monthly, or at such time as the board of trustees shall designate, the amount specified to be deducted, to the secretary-treasurer of the board of trustees. The secretary-treasurer of the board of trustees after making a record of all such receipts shall deposit them in a bank or banks selected by said board of trustees for use according to the provisions of this article.

- (2) The collections of employers' contributions shall be made as follows: Upon the basis of each actuarial valuation provided herein the board of trustees shall annually prepare and certify to each employer a statement of the total amount necessary for the ensuing fiscal year to the pension accumulation fund as provided under subsection (d) of this section.

(h) **Merger of Annuity Reserve Fund, and Pension Reserve Fund into Pension Accumulation Fund.**—Notwithstanding the foregoing, effective at such date not later than December 31, 1959, as the board of trustees shall determine, the annuity reserve fund and the pension reserve fund shall be merged into and become a part of the pension accumulation fund, provided that such merger shall in no way adversely affect the rights of any members or retired members of the System and further provided the board of trustees shall be and hereby is authorized to make such changes in the accounting methods and procedures of the System from time to time as, in its opinion, are in the interest of sound and proper administration of the System. (1939, c. 390, s. 10; 1941, c. 357, s. 8; 1943, c. 535; 1945, c. 526, s. 6; 1951, c. 274, ss. 7-9; 1955, c. 1153, s. 7; 1959, c. 491, s. 9.)

Local Modification.—New Hanover County and city of Wilmington: 1945, c. 526, s. 9. **Editor's Note.**—The 1941 amendment added the last sentence to subdivision (1) of subsection (b). This amendment and

the 1943 amendment made changes in subdivision (4) of subsection (d). The 1945 amendment made changes in subdivisions (1), (3) and (4) of subsection (d). The 1951 amendment rewrote the first sentence of subdivision (1) of subsection (b), made changes in the latter part of subdivision (1) of subsection (d) and added the last sentence of subdivision (4) of subsection (d).

The 1955 amendment rewrote subdivision (1) of subsection (b).

The 1959 amendment substituted "actual" for "earnable" near the middle of subdivision (1) of subsection (b), and near the beginning of subdivision (1) of subsection

(d), and near the middle of subdivision (2) of subsection (d). It struck out the last two sentences of subdivision (1) of subsection (b) and inserted in lieu thereof the present last sentence. It also struck out the words "total compensation earnable by" and inserted in lieu thereof the words "total earned compensation of" in line four of subdivision (5) of subsection (d), and added new subsection (h).

Public Laws 1941, c. 357, which substituted "secretary" for "secretary-treasurer" in subsection (c) of § 128-29, made no such change in subsection (g) (1) b of this section.

§ 128-31. Exemptions from execution.—The right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this article, and the moneys in the various funds created by this article, are hereby exempt from any state or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this article specifically otherwise provided. (1939, c. 390, s. 11.)

§ 128-32. Protection against fraud.—Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of this Retirement System in any attempt to defraud such System as a result of such act shall be guilty of a misdemeanor, and on conviction thereof by any court of competent jurisdiction, shall be punished by a fine not exceeding five hundred dollars (\$500.00), or imprisonment not exceeding twelve months, or both, such fine and imprisonment at the discretion of the court. Should any change or error in the records result in any member or beneficiary receiving from the Retirement System more or less than he would have been entitled to receive had their records been correct, the board of trustees shall correct such error, and as far as practicable, shall adjust the payment in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. (1939, c. 390, s. 12.)

§ 128-33. Certain laws not applicable to members.—Subject to the provisions of article 2 of chapter 135 of Volume 3B of the General Statutes, as amended, no other provision of law in any other statute which provides wholly or partly at the expense of any county, city or town for pensions or retirement benefits for employees of the said county, city or town, their widows, or other dependents shall apply to members or beneficiaries of the Retirement System established by this article. (1939, c. 390, s. 13; 1955, c. 1153, s. 8.)

Editor's Note.—The 1955 amendment rewrote this section.

§ 128-34. Transfer of members.—Any member of the North Carolina Governmental Employees' Retirement System who leaves the service of his employer and enters the service of another employer participating in the North Carolina Governmental Employees' Retirement System shall maintain his status as a member of the Retirement System and shall be credited with all of the amounts previously credited to his account in any of the funds under this article, but the new employer shall be responsible for any accrued liability contribution payable on account of any prior service credit which such employee may have at the time of the transfer, and such employee shall be given such status and be credited with such service with the new employer as allowed with the former employer. (1939, c. 390, s. 14.)

§ 128-35. Obligations of pension accumulation fund.—The maintenance of annuity reserves and pension reserves as provided for, and regular interest creditable

to the various funds as provided in § 128-30, and the payment of all pensions, annuities, retirement allowances, refunds and other benefits granted under the provisions of this article, are hereby made obligations of the pension accumulation fund. All income, interest and dividends derived from deposits and investments authorized by this article shall be used for the payment of said obligations of the said fund. (1939, c. 390, s. 15.)

§ 128-36. Local laws unaffected; when benefits begin to accrue.—Nothing in this article shall have the effect of repealing any public-local or private act creating or authorizing the creation of any officers' or employees' retirement system in any county, city, or town or prohibiting the enactment of any public-local or private act creating or authorizing the creation of any officers' or employees' retirement system in any county, city, or town. No payment on account of any benefit granted under the provisions of § 128-27, subsections (a) to (d) inclusive, shall become effective or begin to accrue until the end of one year following the date the System is established nor shall any compulsory retirement be made during that period. The provisions of this article shall apply only to those counties, cities or towns whose governing authorities voluntarily elect to be bound by same. (1939, c. 390, s. 16; 1941, c. 357, s. 9B; 1945, c. 526, s. 7A.)

Local Modification.—New Hanover County and city of Wilmington: 1945, c. 526, s. 9. **Editor's Note.**—The 1945 amendment rewrote the last sentence.

§ 128-36.1. Participation of employees of regional library.—Under such rules and regulations as the board of trustees shall establish and promulgate, the boards of county commissioners of any group of counties operating a regional library may elect that employees of such library may be members of the North Carolina Local Governmental Employees' Retirement System to the extent of that part of their compensation paid by the various counties operating said regional library. (1949, c. 923.)

§ 128-37. Membership of employees of district health departments.—Under such rules and regulations as the board of trustees shall establish and promulgate, the boards of county commissioners of any group of counties composing a district health department, or the board of county commissioners of any county as to county boards of health, or the governing authorities of any county and/or city as to city-county boards of health, may elect that employees of such health departments may be members of the North Carolina Local Governmental Employees' Retirement System to the extent of that part of their compensation paid by the various counties composing said district health department. (1949, c. 1012; 1951, c. 700.)

Editor's Note.—Former § 128-37, relating to the levy of taxes, etc., was repealed by Session Laws 1945, c. 526, s. 8, and the 1949 act inserted the present section as it appeared before the 1951 amendment.

The 1951 amendment inserted the words

"or the board of county commissioners of any county as to county boards of health, or the governing authorities of any county and/or city as to city-county boards of health." It also substituted "health departments" for "district health department."

§ 128-37.1. Membership of employees of county welfare department.—Under such rules and regulations as the board of trustees shall establish and promulgate, the board of county commissioners of any county may elect that employees of the county welfare department may be members of the North Carolina Local Governmental Employees' Retirement System; provided, that such membership may be elected jointly with such county health department employees as provided under G. S. 128-37. (1959, c. 1179.)

§ 128-38. Reservation of power to change.—The General Assembly reserves the right at any time and from time to time, and if deemed necessary or appropriate by said General Assembly in order to coordinate with any changes in the benefit and other provisions of the Social Security Act made after January 1, 1955, to

modify or amend in whole or in part any or all of the provisions of the North Carolina Local Governmental Employees' Retirement System. (1955, c. 1153, s. 9.)

Editor's Note.—Former § 128-38, relating to withdrawal from System by participating units, was repealed by Session Laws 1945, c. 526, s. 8, and the 1955 act inserted the present section.

ARTICLE 4.

Leaves of Absence.

§ 128-39. Leaves of absence for State officials.—Any elective or appointive State official may obtain leave of absence from his duties for military or naval service, protracted illness, or other reason satisfactory to the Governor, for such period as the Governor may designate. Such leave shall be obtained only upon application by the official and with the consent of the Governor. The official shall receive no salary during the period of leave unless the leave of absence is granted by reason of protracted illness, in which event the granting of a leave of absence shall not operate to deprive any such official of the benefits of cumulative sick leave to which he may be entitled under rules and regulations adopted pursuant to § 143-37 or to which he may otherwise be entitled by law. The period of leave may be extended upon application to and with the approval of the Governor if the reason for the original leave still exists, and it may be shortened if the said reason shall unexpectedly terminate: Provided, that no leave or extension thereof shall operate to extend the term of office of any official beyond the period for which he was elected or appointed. If, by reason of the length of the period of absence or the nature of the duties of the official, the Governor deems it necessary, the Governor may appoint any citizen of the State, without regard to residence or district, as acting official or substitute for the period of the official's leave of absence, such appointee to have all the authority, duties, perquisites, and emoluments of his principal. (1941, c. 121, s. 1.)

Editor's Note.—Session Laws 1959, c. 285, which amended subdivision (3) of G. S. 147-12, provided that "nothing in this act shall be construed to repeal G. S. 128-39."

Acceptance of Temporary Army or Navy Commission.—Under this section any State official may be given a leave of absence to accept a temporary officer's commission in the United States army or navy, as prescribed in this section, without perforce vacating his civil office and without violation of the provisions of N. C. Consti-

tution, Art. XIV, § 7. In re Yelton, 223 N. C. 845, 28 S. E. (2d) 567 (1944).

Acceptance of Appointment Creating Vacancy.—Where a judge of a superior court has been granted leave of absence under provisions of this section, his acceptance of appointment as judge of United State Zonal Court in Germany would contravene the provisions of the Constitution, Art. XIV, § 7 and ipso facto create a vacancy in his office. In re Advisory Opinion, 226 N. C. 772, 39 S. E. (2d) 217 (1946).

§ 128-40. Leaves of absence for county officials.—Any elective or appointive county official may obtain leave of absence from his duties for military or naval service, protracted illness, or other reason satisfactory to the board of county commissioners of his county, for such period as the board of county commissioners may designate. Such leave shall be obtained only upon application by the official and with the consent of the board of county commissioners. The official shall receive no salary during the period of leave unless the leave of absence is granted by reason of protracted illness, in which event the granting of a leave of absence shall not operate to deprive any such official of the benefits of any sick leave to which he may be entitled by law. The period of leave may be extended upon application to and with the approval of the board of county commissioners if the reason for the original leave still exists, and it may be shortened if the said reason shall unexpectedly terminate: Provided, that no leave or extension thereof shall operate to extend the term of office of any official beyond the period for which he was elected or appointed. If, by reason of the length of the period of absence or the nature of the duties of the official, the board of county commissioners deems it necessary, the board may appoint any quali-

fied citizen of the county as acting official or substitute for the period of the official's leave of absence, such appointee to have all the authority, duties, perquisites, and emoluments of his principal. (1941, c. 121, s. 2.)

Cited in *In re Yelton*, 223 N. C. 845, 28 S. E. (2d) 567 (1944).

§ 128-41. Leaves of absence for municipal officers.—Any elective or appointive municipal official may obtain leave of absence from his duties for military or naval service, protracted illness, or other reason satisfactory to the governing body of the municipality, for such period as the governing body may designate. Such leave shall be obtained only upon application by the official and with the consent of the governing body. The official shall receive no salary during the period of leave unless the leave of absence is granted by reason of protracted illness, in which event the granting of a leave of absence shall not operate to deprive any such official of the benefits of any sick leave to which he may be entitled by law. The period of leave may be extended upon application to and with the approval of the governing body of the municipality if the reason for the original leave still exists, and it may be shortened if the said reason shall unexpectedly terminate: Provided, that no leave or extension thereof shall operate to extend the term of office of any official beyond the period for which he was elected or appointed. If, by reason of the length of the period of absence or the nature of the duties of the official, the governing body deems it necessary, it may appoint any qualified citizen of the municipality as acting official or substitute for the period of the official's leave of absence, such appointee to have all the authority, duties, perquisites, and emoluments of his principal. (1941, c. 121, s. 3.)

Cited in *In re Yelton*, 223 N. C. 845, 28 S. E. (2d) 567 (1944).

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Public Buildings and Grounds.

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ARTICLE 1.

General Services Division.

§ 129-1. **General Services Division created.**—There is hereby created the General Services Division as a part of the office of the Governor. (1957, c. 215, s. 2.)

Editor's Note.—Former chapter 129, entitled Public Buildings and Grounds, §§ 129-1 to 129-13, and codified from Public Laws 1941, c. 224, and Session Laws 1951, c. 1132, was repealed by Session Laws 1957, c. 215, which inserted this new chapter.

Transfer of Property, Records, etc., to Division.—Session Laws 1957, c. 215, s. 3

provides: "All records, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments, and executory contracts of the Board of Public Buildings and Grounds and the Superintendent of Public Buildings and Grounds are hereby transferred to the General Services Division, effective July 1, 1957."

§ 129-2. **Definitions.**—As used in this chapter:

"Agency" includes every agency, institution, board, commission, bureau, council, department, division, officer, and employee of the State situated within the corporate limits of the city of Raleigh.

"Director" means the Director of General Services.

"Division" means the General Services Division.

"Public buildings" means all buildings owned or maintained by the State in the city of Raleigh, but does not mean any building which a State agency other than the General Services Division is required by law to care for and maintain.

"Public buildings and grounds" means all buildings and grounds owned or maintained by the State in the city of Raleigh, but does not mean any building or grounds which a State agency other than the General Services Division is required by law to care for and maintain.

"Public grounds" means all grounds owned or maintained by the State in the city of Raleigh, but does not mean any grounds which a State agency other than the General Services Division is required by law to care for and maintain. (1957, c. 215, s. 2.)

§ 129-3. Appointment of Director; term of office; salary.—The Director of General Services is appointed by the Governor and serves at the pleasure of the Governor. The Director is paid a salary which is fixed by the Governor, subject to the approval of the Advisory Budget Commission. (1957, c. 215, s. 2.)

§ 129-4. Powers and duties of Director.—The Director of General Services has the following powers and duties:

- (1) To administer the General Services Division.
- (2) To employ, supervise, and control such subordinate officers and employees as are necessary for the efficient execution of the powers and duties of his office and those of the Division. The compensation of all persons employed by the Director shall be fixed in accordance with the State Personnel Act.
- (3) To supervise the work of janitors appointed by the General Assembly to perform services in connection with the sessions of the General Assembly.
- (4) To adopt reasonable rules and regulations with respect to the parking of automobiles on all public grounds, subject to the approval of the Governor and Council of State, and to enforce those rules and regulations. Any person who violates a rule or regulation concerning parking on public grounds is guilty of a misdemeanor, and upon conviction is punishable in the discretion of the court.
- (5) To use at all times such means as, in his opinion, may be effective in protecting all public buildings and grounds from fire.
- (6) To serve as a special police officer, and in that capacity to arrest with warrant any person violating any law in or on, or with respect to, public buildings and grounds, and to arrest, or to pursue and arrest, without warrant any person violating in his presence any law in or on, or with respect to, public buildings and grounds. Before the Director may exercise the powers of arrest under this subdivision, he shall take an oath, to be administered by the Attorney General, in the following form:

"I, A. B., do swear (or affirm) that I will well and truly execute the duties of the office of special peace officer for public buildings and grounds according to the best of my skill and ability, and according to law; so help me, God."
- (7) To designate as special peace officers such reliable and efficient employees of the Division as he may think proper, who shall have the same powers of arrest as the Director is given herein. Before any officer designated by the Director may exercise the powers of arrest under this subdivision, he shall take an oath, to be administered by the Director, in the same form as the oath herein prescribed for the Director.
- (8) To perform all duties, exercise all powers, and assume and discharge all responsibilities vested by law in the Division, except as otherwise expressly provided by statute.
- (9) To perform such additional duties as the Governor may direct. (1957, c. 215, s. 2.)

§ 129-5. Powers and duties of Division.—The General Services Division has the following powers and duties:

- (1) To operate, maintain and care for public buildings and grounds; to establish, locate, maintain, and care for walks, driveways, trees, shrubs, flowers, fountains, monuments, memorials, markers, and tablets on public grounds; and to beautify the public grounds.
- (2) To provide necessary and adequate cleaning and janitorial service, elevator operation service, and other operation or maintenance services for the public buildings and grounds.
- (3) To provide necessary night watchmen for the public buildings and grounds.
- (4) To make prompt repair of all public buildings and the equipment, furniture, and fixtures thereof; and to establish and operate shops for that purpose.
- (5) To keep in repair, out of funds appropriated for that purpose, the furniture of the halls of the Senate and House of Representatives and the rooms of the Capitol used by the officers, clerks, and other employees of the General Assembly.
- (6) Struck out by Session Laws 1959, c. 68, s. 3.
- (7) To establish and operate a central mailing system for all State agencies, and in connection therewith and in the discretion of the Director, to make application for and procure a post office substation for that purpose, and to do all things necessary in connection with the maintenance of the central mailing system. The Director may allocate and charge against the respective departments and agencies their proportionate parts of the cost of the maintenance of the central mailing system.
- (8) To provide necessary and adequate messenger service for the State agencies served by the Division. However, this may not be construed as preventing the employment and control of messengers by any State agency when those messengers are compensated out of the funds of the employing agency.
- (9) To establish and operate a central motor pool and such subsidiary related facilities as the Director may deem necessary, and to that end:
 - a. To establish and operate central facilities for the maintenance, repair, and storage of State-owned passenger motor vehicles for the use of State agencies; to utilize any available State facilities for that purpose; and to establish such subsidiary facilities as the Director may deem necessary.
 - b. To acquire passenger motor vehicles by transfer from other State agencies and by purchase. All motor vehicles transferred to or purchased by the Division shall become part of a central motor pool. The Director of the Budget is authorized to transfer the appropriations, made to the several agencies for the purchase of passenger motor vehicles during the 1957-1959 biennium, to the Division for use in acquiring motor vehicles for the motor pool.
 - c. With the approval of the Governor, to require any State agency to transfer ownership, custody, and control of any or all passenger motor vehicles within the ownership, custody, or control of that agency to the General Services Division.
 - d. To maintain, store, repair, dispose of, and replace State-owned motor vehicles under the control of the Division.
 - e. Upon proper requisition and proper showing of need for use upon State business only, to assign suitable transportation, either on a temporary or permanent basis, to any State agency.
 - f. To allocate and charge against each State agency to which transportation is furnished, on a basis of mileage or of rental, its

proportionate part of the cost of maintenance and operation of the motor pool.

- g. To adopt, with the approval of the Governor and Council of State, reasonable rules and regulations for the efficient and economical operation, maintenance, repair, and replacement of all State-owned motor vehicles under the control of the Division, and to enforce those rules and regulations; and to adopt, with the approval of the Governor and Council of State, reasonable rules and regulations regulating the use of private motor vehicles upon State business by the officers and employees of State agencies, and to enforce those rules and regulations. The Division, with the approval of the Governor and Council of State, may delegate to the respective heads of the agencies to which motor vehicles are permanently assigned by the Division the duty of enforcing the rules and regulations adopted by the Division pursuant to this paragraph. Any person who violates a rule or regulation adopted by the Division and approved by the Governor and Council of State is guilty of a misdemeanor, and upon conviction is punishable in the discretion of the court.
 - h. To require any State agency to keep such records and make such reports to the Director as the Director may require regarding motor vehicle use.
 - i. To acquire motor vehicle liability insurance on all State-owned motor vehicles under the control of the Division.
 - j. To contract with the appropriate State prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such State prison authorities and the Director, of prison labor for use in connection with the operation of a central motor pool and related activities.
- (10) To establish and operate a central telephone system, central mimeographing and duplicating services, central stenographical and clerical pools, and other central services, if the Governor after appropriate investigation deems it advisable from the standpoint of efficiency and economy in operation to establish any or all such services. The Director may allocate and charge against the respective agencies their proportionate part of the cost of maintenance and operation of the central services which are established, in accordance with the rules and regulations adopted by him and approved by the Governor and Council of State pursuant to subdivision (11), below. Upon the establishment of central mimeographing and duplicating services, the Director may, with the approval of the Governor, require any State agency to be served by those central services to transfer to the General Services Division ownership, custody, and control of any or all mimeographing and duplicating equipment and supplies within the ownership, custody, or control of such agency.
- (11) To require the State agencies and their officers and employees to utilize the central facilities and services which are established; and to adopt, with the approval of the Governor and Council of State, reasonable rules, regulations, and procedures requiring the utilization of such central facilities and services, and governing their operation and the charges to be made for their services.
- (12) To provide necessary information service for visitors to the Capitol.
- (13) To perform such additional duties and exercise such additional powers as may be assigned to it by statute or by the Governor. (1957, c. 215, s. 2; 1959, c. 1326.)

Editor's Note.—The first 1959 amendment struck out subdivision (6), and the second 1959 amendment rewrote paragraph “i” of subdivision (9).

§ 129-6. Rules and regulations.—The Governor, with the approval of the Council of State, shall adopt reasonable rules and regulations governing the use, care, protection, and maintenance of the public buildings and grounds (other than parking). Any person who violates a rule or regulation adopted by the Governor with the approval of the Council of State is guilty of a misdemeanor, and upon conviction is punishable in the discretion of the court. (1957, c. 215, s. 2.)

§ 129-7. Disorderly conduct in and injury to public buildings and grounds.—Any person who commits a nuisance or conducts himself in a disorderly manner in or around any public building or grounds, or defaces or injures any public building or grounds, is guilty of a misdemeanor and upon conviction is punishable in the discretion of the court. (1957, c. 215, s. 2.)

§ 129-8. Construction and repair of public buildings; use of Contingency and Emergency Fund.—It is lawful to resort to the Contingency and Emergency Fund provided in the Appropriation Act for financial aid in the construction, alteration, renovation, or repair of any public building, when in the opinion of the Governor and Council of State it is necessary to construct, alter, renovate, or repair such building. (1957, c. 215, s. 2.)

§ 129-9. Moore and Nash squares and other public lots.—The governing body of the city of Raleigh is authorized, at its own expense, to grade, to lay out in walks, to plant with trees, shrubbery, and flowers and otherwise to adorn Moore and Nash squares and to that end has the general charge and management of these squares. The governing body may manage and improve in like manner any of the vacant lots within the city limits which belong to the State and which are not otherwise appropriated, subject to the approval of the Governor and Council of State. The governing body may not prevent the free access of the public to such squares or lots during reasonable hours.

Whenever, in the opinion of the Director, the governing body is not properly keeping the squares or lots which it has taken in charge under this section, the Director shall call the matter to the attention of the governing body, and if the governing body then fails for a period of sixty days to begin to take proper care of the squares or lots, the Governor and Council of State may repossess them and proceed to manage and control them for the preservation of such property.

In the event that the use of these squares and lots is at any time needed by the State, the license of the city of Raleigh to control and manage them shall terminate six months after notice given by the Governor and Council of State to the governing body of the city, and possession shall be promptly surrendered to the State. (1957, c. 215, s. 2.)

§ 129-10. Change of titles.—All statutory references to the "Superintendent of Public Buildings and Grounds" shall be deemed to refer to the Director of General Services. All statutory references to the "Board of Public Buildings and Grounds" shall be deemed to refer to the General Services Division. (1957, c. 215, s. 2.)

§ 129-11. Transfer of Division into Department of Administration.—If at any time a Department of Administration or its equivalent is created by statute, the Governor and Council of State are authorized, if in the exercise of their discretion they deem it advisable to do so, to transfer the General Services Division into the Department of Administration. In that event:

- (1) The Director of General Services shall become the head of the General Services Division, and the appointment, removal, and salary of that officer shall be governed by the provisions of the Department of Administration Act;
- (2) The General Services Division shall become a division of the Department of Administration; and

- (3) The powers and duties herein given the Director of General Services shall become a part of the powers and duties of the Director of Administration, and the powers and duties herein given the General Services Division shall become a part of the powers and duties of the Department of Administration. (1957, c. 215, s. 2.)

ARTICLE 2.

Building Program.

§ 129-12. Program for location and construction of future public buildings.—The Department of Administration is hereby authorized, empowered, and directed to formulate a long range building policy program and shall cooperate with the governing board of the city of Raleigh in zoning property adjacent to or in the vicinity of the Capitol Square when and if the city of Raleigh desires to zone said property. If the Department of Administration is of opinion that property adjacent to or in the vicinity of the Capitol Square will, in the future, be needed for State building purposes, it shall so advise the governing body of the city of Raleigh. At such times as the governing body of the city of Raleigh shall rezone property adjacent to or within four blocks of the State Capitol, it shall request an opinion from the Department of Administration as to whether the Department finds a future need for such property for State building purposes. In the event that the governing board of the city of Raleigh is informed by the Department of Administration that any property herein covered be needed for building purposes by the State in the future, the governing body of the city of Raleigh shall give full consideration to such opinion of the Department before making any rezoning order. (1951, c. 1132; 1957, c. 215, s. 2.)

ARTICLE 2.1.

State Legislative Building.

§ 129-12.1. Official name.—The building constructed under the direction of the State Legislative Building Commission in Raleigh, and which is used to house the legislative branch of the State government is officially designated as the State Legislative Building, and all references in publications issued by the State of North Carolina or any agency, department or institution thereof shall refer to the building as the State Legislative Building. (1963, c. 8.)

ARTICLE 3.

State Legislative Building Commission.

§ 129-13. Creation; composition; appointment of members; vacancies; chairman.—There is hereby created the State Legislative Building Commission, which shall consist of two persons who have served in the State Senate, appointed by the President of the Senate; two persons who have served in the House of Representatives, appointed by the Speaker of the House of Representatives; and three persons appointed by the Governor. All members shall be appointed on July 1, 1959, or as soon thereafter as is practicable, and shall serve until the completion of the duties assigned to the Commission. Each vacancy occurring in the membership of the Commission shall be filled by appointment of the officer authorized to make the initial appointment to the place vacated, and each appointee to fill a vacancy shall have the same qualifications prescribed by this article for the appointee whom he succeeds. The members of the Commission shall elect one of their number as chairman. (1959, c. 938, s. 1.)

§ 129-14. Powers and duties generally.—The State Legislative Building Commission shall have the following powers and duties:

- (1) To acquire on behalf and in the name of the State a suitable site in the city of Raleigh for a State Legislative Building and related facilities and grounds.
- (2) To employ architects to prepare plans for the State Legislative Building, to assist and advise the architects in the preparation of those plans, to approve on behalf of the State all plans for the State Legislative Building. No plans shall be made or included for quarters for the Governor.
- (3) To enter on behalf of the State into contracts for the purchase of all real property and interests therein, services, materials, furnishings, and equipment required in connection with the location, design, construction, furnishing, and equipping of the State Legislative Building.
- (4) To supervise generally the location, construction, furnishing, and equipping of the State Legislative Building.
- (5) To call upon the Department of Administration, the Attorney General, and any other State agency or officer for such assistance as the Commission may require in carrying out its duties.
- (6) To appoint such advisory committees, composed of persons not members of the Commission, as the Commission deems necessary.
- (7) To report to the General Assembly at each regular Session concerning action taken by the Commission during the previous biennium in carrying out the provisions of this article, and to make such special reports as may be requested by the General Assembly or the Governor. (1959, c. 938, s. 2.)

§ 129-15. **Right of eminent domain.**—Whenever the State Legislative Building Commission finds it necessary to acquire land, rights of way, or easements in order to carry out the purposes of this article, and the Commission is unable to purchase the same from the owners at an agreed price, or is unable to obtain a good and sufficient title therefor by purchase from the owners, then the Commission may exercise the right of eminent domain and acquire any such lands, rights of way, or easements necessary for the aforesaid purpose by condemnation in the manner prescribed in chapter 40 of the General Statutes. The provisions of G. S. 40-53 shall not apply to any proceeding had under this article. (1959, c. 938, s. 3.)

§ 129-16. **Funds and expenditures.**—All moneys expended by the State Legislative Building Commission, including the expenses of the Commission, shall be paid by the State Treasurer upon warrant drawn by the chairman of the Commission, from funds appropriated by the General Assembly. The Governor and Council of State are authorized to advance to the Commission from the Contingency and Emergency Fund, and subject to repayment, such sums as may be required to meet the expenses of the Commission prior to the availability of funds appropriated for the use of the Commission. (1959, c. 938, s. 4.)

§ 129-17. **Per diem and allowances for members.**—The members of the State Legislative Building Commission shall receive for their services the same per diem and other allowances as are granted the members of State boards and commissions generally. (1959, c. 938, s. 5.)

ARTICLE 3.1.

Legislative Building Governing Commission.

§ 129-17.1. **Creation; composition.**—There is hereby created a Legislative Building Governing Commission, which shall consist of the President of the North Carolina Senate, two persons appointed by the President of the Senate and who are members of the Senate at the time of their appointment, the Speaker of the North Carolina House of Representatives, and two persons appointed by the Speaker of the House and who are members of the House of Representatives at the time of their appointment. (1963, c. 1, s. 1.)

§ 129-17.2. Terms of members; vacancies.—One of the members of the Legislative Building Governing Commission initially appointed by the President of the Senate shall hold office for a term of two years and the other member of said Commission initially appointed by the President of the Senate shall hold office for a term of four years; thereafter the members appointed by the President of the Senate shall hold office for terms of four years. One of the members of the Legislative Building Governing Commission initially appointed by the Speaker of the House shall hold office for a term of two years and the other member of said Commission initially appointed by the Speaker of the House shall hold office for a term of four years; thereafter the members appointed by the Speaker of the House shall hold office for terms of four years. The terms of the President of the Senate and the Speaker of the House as members of the Legislative Building Governing Commission shall expire when their successors in office as President and Speaker have been elected and qualified. Provided, that in the event a vacancy occurs on the Commission by reason of death, resignation or other cause, the remaining members of the Commission shall appoint a member, with the same status qualifications as his predecessor, to fill said vacancy who shall serve until the convening of the next session of the General Assembly, or until his successor is duly appointed. (1963, c. 1, s. 2.)

§ 129-17.3. Powers and duties generally; delegation of maintenance work; posting and filing rules and regulations; violations.—The Legislative Building Governing Commission shall (i) determine policy governing the use of the State Legislative Building, (ii) make allocations of space within the State Legislative Building, (iii) be responsible for the maintenance and care of the State Legislative Building and (iv) promulgate rules and regulations governing the use of the State Legislative Building and its facilities. In discharging the responsibilities of maintenance and care of the building, the Legislative Building Governing Commission may delegate to the Department of Administration the duty of performing the actual work of maintenance and care of the building, and the Department of Administration shall provide proper maintenance and care, subject to the general direction of the Legislative Building Governing Commission.

The rules and regulations promulgated by the Legislative Building Governing Commission, as authorized by this article, shall be posted in conspicuous places in the State Legislative Building and a copy of the same certified by the Legislative Building Governing Commission shall be filed in the office of the Secretary of State and in the office of the clerk of the Superior Court of Wake County, and when so posted and filed shall constitute notice to all persons of the existence of said regulations. Any person, whether on his own behalf or for another, or acting as an agent or representative of any person, firm, corporation, partnership or association, who shall knowingly violate any of the rules or regulations promulgated under the authority of this article shall be guilty of a misdemeanor and upon conviction or a plea of guilty shall be punished by a fine or imprisonment in the discretion of the court or by both such fine and imprisonment. Any person, firm, corporation, partnership or association who shall combine, confederate, conspire, aid, abet, solicit, urge, instigate, counsel, advise, encourage or procure another or others to knowingly violate any of the rules and regulations promulgated under the authority of this article shall be guilty of a misdemeanor and upon conviction or a plea of guilty shall be punished by a fine or imprisonment in the discretion of the court or by both such fine and imprisonment. (1963 c. 1, s. 3; c. 716.)

Editor's Note.—Session Laws 1963, c. 716, added the second paragraph.

§ 129-17.4. Assignment of offices to members of legislature.—Notwithstanding any other provision of this article, assignment of an office in the Legislative Building shall be made to each member of the legislature for his or her use only, during his or her term of office. (1963, c. 1, s. 4.)

§ 129-17.5. Officers; employees; per diem and expenses.—The Legislative Building Governing Commission shall organize by electing a chairman, a vice-chairman and a secretary. The Commission is authorized to employ such clerical and other assistants as may be deemed necessary in the performance of its duties and the members of the Commission shall be paid the sum of seven dollars per day and such necessary travel expenses and subsistence and other expenses as may be incurred by them in the performance of their duties, all to be paid out of the Contingency and Emergency Fund. (1963, c. 1, s. 7.)

ARTICLE 4.

Heritage Square and Commission.

§ 129-18. Heritage Square established.—As a means of preserving, fostering, and transmitting to present and future generations the historical, literary, artistic, and scientific heritage of the people of North Carolina, there is hereby established a center, to be designated "Heritage Square", wherein may ultimately be provided suitable buildings for the North Carolina State Library, the State Department of Archives and History, the North Carolina Museum of Art, and the State Museum of Natural History of the Department of Agriculture. (1961, c. 385.)

§ 129-19. Heritage Square Commission created; appointment and terms of members; vacancies; chairman.—There is hereby created "The Heritage Square Commission", which shall consist of nine persons appointed by the Governor. At least two members shall be persons who have served in the General Assembly. All members shall be appointed on July 1, 1961, or as soon thereafter as is practicable. Of the initial appointments to the Commission, four shall be for terms of four years and five shall be for terms of six years; thereafter all regular appointments shall be for terms of six years. The Governor shall appoint to fill for the unexpired term any vacancy occurring in the membership of the Commission. The chairman of the Commission shall be designated by the Governor from among the Commission membership. (1961, c. 385.)

§ 129-20. General powers and duties of the Commission.—The Heritage Square Commission shall have the following powers and duties:

- (1) To select and acquire in the name of the State a suitable site for Heritage Square, after consultation with the agency responsible for the development of a long-range capital improvement program for State agencies in the city of Raleigh.
- (2) To prepare and adopt a general plan for the development of Heritage Square, including the location of the structures to be situated thereon.
- (3) To approve the plans for the buildings to be erected on Heritage Square.
- (4) To advise the Department of Administration with respect to the letting of contracts by that Department for the purchase of services, materials, utilities, and equipment required in connection with the design, construction, and equipping of the buildings to be erected on Heritage Square.
- (5) To call upon the Department of Administration and to employ such architects and other persons as may be necessary, to advise and assist the Commission in the execution of its duties.
- (6) To accept upon such terms and conditions as the Commission deems proper and see to the proper application of gifts, grants, devises, and bequests of money and property for the development of Heritage Square and its buildings.
- (7) To consult frequently with the administrative heads of the several State agencies for which buildings are ultimately to be erected on Heritage Square.
- (8) To submit a biennial report of its activities to the Governor and the General Assembly. (1961, c. 385.)

§ 129-21. **Eminent domain.**—Whenever the Heritage Square Commission finds it necessary to acquire land, rights of way, easements, or other interests in land in order to carry out the purposes of this article, and the Commission is unable to purchase the same from the owners at an agreed price, or is unable to obtain a good and sufficient title thereto by purchase from the owners, then the Commission may exercise the right of eminent domain and acquire such lands, rights of way, easements, or other interests necessary for those purposes by condemnation in the manner prescribed in article 9 of chapter 136 of the General Statutes. The provisions of article 9, chapter 136, are hereby incorporated into this article by reference with the following changes: The words “Heritage Square Commission” are substituted for the words “State Highway Commission” or “Highway Commission” wherever they appear in that article; the words “chairman of the Heritage Square Commission” are substituted for the words “Director of Highways, State Highway Commission” in G. S. 136-106 (b) and 136-111; and title to all land, rights of way, easements, or other interests in land, taken under the provisions of this article, shall vest in the State of North Carolina. (1961, c. 385.)

§ 129-22. **Per diem and allowances of members of Commission.**—The members of the Heritage Square Commission shall receive for their services the same per diem and allowances as are granted the members of State boards and commissions generally. (1961, c. 385.)

§ 129-23. **Expenses of Commission.**—All operating expenses of the Commission not provided for by legislative appropriation shall be paid from the Contingency and Emergency Fund, upon application in the manner prescribed in G. S. 143-12. (1961, c. 385.)

§ 129-24. **Exemption from chapter 100.**—The provisions of article 1, chapter 100, of the General Statutes shall not apply to plans prepared for Heritage Square or for the buildings to be erected thereon. (1961, c. 385.)

§ 129-25. **Expiration of Commission.**—The Heritage Square Commission shall expire upon certification by the chairman of the Commission to the Governor that, in the opinion of the Commission, it has performed all of the duties assigned to it by this article. (1961, c. 385.)

ARTICLE 5.

State Capital Planning Commission.

§ 129-26. **Commission created; membership; chairman.**—There is hereby created “The State Capital Planning Commission”, which shall consist of nine persons appointed by the Governor. At least two members shall be persons who have served in the General Assembly. All members shall be appointed on July 1, 1961, or as soon thereafter as is practicable, and shall serve until the completion of the duties assigned to the Commission. The Governor shall appoint to fill any vacancy occurring in the membership of the Commission. The chairman of the Commission shall be designated by the Governor from among the Commission membership. (1961, c. 361.)

§ 129-27. **Powers and duties of Commission.**—The State Capital Planning Commission shall have the following powers and duties:

- (1) To make a thorough investigation of present State laws, policies and practices with respect to the financing, location, planning and construction of buildings and other capital improvements for State governmental agencies in the city of Raleigh.
- (2) To analyze the building requirements of State governmental agencies in the city of Raleigh over such period as the Commission deems advisable, and

to formulate and recommend to the Governor and the General Assembly a long-range capital improvement policy and program to aid the Governor and the General Assembly in meeting those requirements and a master plan for the future development of the physical plant of State government in the city of Raleigh over such period as the Commission deems advisable.

- (3) To call upon the Department of Administration for assistance and to employ such other assistance as the Commission may find necessary in the execution of its duties. (1961, c. 361.)

§ 129-28. **Per diem and allowances.**—The members of the State Capital Planning Commission shall receive for their services the same per diem and allowances as are granted the members of State boards and commissions generally. (1961, c. 361.)

§ 129-29. **Expenses.**—All expenses of the Commission shall be paid from the Contingency and Emergency Fund, upon application in the manner prescribed in G. S. 143-12. (1961, c. 361.)

§ 129-30. **Expiration.**—The State Capital Planning Commission shall expire upon certification by the chairman of the Commission to the Governor that, in the opinion of the Commission, it has performed all of the duties assigned to it by this article, but shall in any event expire not later than July 1, 1965. (1961, c. 361.)

Chapter 130. Public Health.

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ARTICLE 1.

General Provisions.

§ 130-1. **Rules of construction.**—(a) This chapter shall be known as the Public Health Law of North Carolina.

(b) All persons who, at the time this chapter takes effect, hold office under any of the statutes repealed or rewritten by this chapter, and whose offices are continued by this chapter, continue to hold them according to their former tenure unless otherwise specified.

(c) Any action or proceeding commenced before this chapter takes effect, and any right accrued, is not affected by this chapter, but all procedures thereafter shall conform, insofar as possible, with the provisions of this chapter.

(d) Whenever a duty is imposed upon a public officer, the duty may be performed unless this chapter expressly provides otherwise, by a deputy of the officer or by a person duly authorized by the State Board of Health.

(e) The operation and effect of any provision of this chapter conferring a general power upon the State Board of Health, local boards of health, local health departments, or local health directors, shall not be impaired or qualified by the granting to said boards, departments or individuals by this chapter of a specific power or powers. (1957, c. 1357, s. 1.)

Editor's Note.—Session Laws 1957, c. 1357, s. 1, rewrote, rearranged and renumbered the provisions of chapter 130 appearing in recompiled volume 3B and the 1955

Supplement to read as set out in this chapter, to which have been added § 130-52.1 and articles 23 and 24, codified from other chapters of the 1957 Session Laws.

§ 130-2. **Notice.**—Unless expressly otherwise provided, any notice required to be given to any person by any provision of this chapter or any regulations adopted pursuant thereto, may be given by mailing the notice, by registered mail or certified mail, postage prepaid, addressed to the person to be notified, at his last known residence or last known principal place of business in this State. (1957, c. 1357, s. 1.)

§ 130-3. **Definitions, as used in this chapter.**—(a) "Board" or "State Board" means "State Board of Health."

(b) "Funeral director" means a person licensed in accordance with the provisions of article 13 of chapter 90 of the General Statutes of North Carolina.

(c) "Licensed physician" means a physician licensed to practice medicine in North Carolina.

(d) "Local board of health" includes district board of health, county board of health, city board of health, and city-county board of health.

(e) "Local health department" includes district health department, county health department, city health department, and city-county health department.

(f) "Local health director" includes local health officer, county health officer, district health officer, city health officer, city-county health officer, county superintendent of health, county health director, or any other title by which the administrative head of a local health department is designated.

(g) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, or company.

(h) "State Health Director" means the executive officer of the State Board of Health. (1957, c. 1357, s. 1; 1963, c. 492, ss. 5, 6.)

Editor's Note.—The 1963 amendment added subsection (b).

ARTICLE 2.

Administration of Public Health Law.

§ 130-4. **State Board of Health created; membership.**—There is hereby created a State Board of Health. The Board shall consist of nine members, four of

whom shall be elected by the Medical Society of the State of North Carolina and five of whom shall be appointed by the Governor. One of the members appointed by the Governor shall be a licensed pharmacist, one a reputable dairyman, one a licensed dentist, and one a licensed veterinarian.

The members of the Board shall receive no pay, except that each member may receive ten dollars (\$10.00) per diem, unless the Biennial Appropriations Act specifically provides otherwise, and necessary traveling and subsistence expenses when on actual duty in attending the meetings of the Board or of the executive committee or in pursuing special investigations in the State; but when attending meetings beyond the limits of the State, only actual traveling and subsistence shall be allowed.

The executive office of the Board shall be in the capital city of the State of North Carolina. (1957, c. 1357, s. 1.)

130-5. Terms of Board members; removal; filling vacancies.—The members of the State Board of Health shall serve four-year, staggered terms. The Medical Society of the State of North Carolina shall elect two members each odd-numbered year to fill the vacancies created by the expiration of the terms of two members. The Governor shall appoint two members on or before May first, 1959, and three members on or before May first, 1961, to fill vacancies occurring in those years, such members to serve for a term of four years and their successors thereafter shall be appointed by the Governor.

The terms of all members of the State Board of Health holding office on the date of the passage of this chapter shall expire on the same date that their respective terms would have expired had this chapter not been passed. At the expiration of the terms of the present members their successors shall be elected or appointed for a term of four years and until their successors have been duly elected or appointed and have qualified.

The Medical Society of the State of North Carolina shall have the right to remove any member elected by it for cause, and the Governor shall have the right to remove any member appointed by him for cause. Vacancies on said Board among the membership elected by the Medical Society of the State of North Carolina shall be filled by the executive committee of the Medical Society until the next meeting of the Medical Society, when the Medical Society shall fill the vacancy for the unexpired term. Vacancies on said Board among the membership appointed by the Governor shall be filled by the Governor for the unexpired term. (1879, c. 117, s. 3; Code, s. 2877; 1885, c. 237, s. 3; 1893, c. 214, s. 2; 1901, c. 245; Rev., s. 4436; 1911, c. 62, s. 2; C. S., s. 7049; 1931, c. 177, s. 2; 1957, c. 1357, s. 1.)

§ 130-6. Officers and executive committee of State Board; State Health Director; Assistant State Health Director.—The State Board of Health shall have a president, a vice president and an executive committee, said executive committee to have such powers and duties as may be assigned to it by the State Board of Health. The president shall be elected by and from the members of the Board and shall serve two years. The executive committee shall be composed of the president of the Board, ex officio, or his representative, and two other members of the Board to be elected by the Board from among its membership. The State Health Director shall serve as secretary and treasurer to the State Board of Health.

There is hereby created the position of the State Health Director. The State Health Director shall be elected by the Board, subject to the approval of the Governor, to serve for four years and until his successor has been elected and qualified. The State Health Director shall be licensed to practice medicine in the State of North Carolina, and shall be trained in, and shall have had experience in, public health work. The Board shall have the right to remove the State Health Director from office for cause. The State Health Director shall be the executive officer of the Board and shall devote his entire time to public health work as approved by the State Board of Health. He shall maintain an office in the capital city of the State

of North Carolina. He shall perform such functions as may be designated by the State Board of Health or by law.

The Board may appoint a full-time Assistant State Health Director, subject to the approval of the Governor. The Assistant State Health Director shall serve at the pleasure of the Board. The Assistant State Health Director shall perform such functions as shall be designated by the State Board of Health or by the State Health Director. He shall be subject to the provisions of chapter 126 of the General Statutes of North Carolina. (1879, c. 117, ss. 5, 7; Code, ss. 2878, 2881; 1885, c. 237, s. 4; 1893, c. 214, s. 4; Rev., s. 4440; 1911, c. 62, s. 6; 1913, c. 181, ss. 1, 2; C. S., s. 7053; 1921, c. 130; 1927, c. 143; 1931, c. 177, s. 3; 1957, c. 1357, s. 1.)

§ 130-7. Election meetings.—The meeting of the State Board of Health for the election of officers shall be at the first regular meeting after the conjoint session at the annual meeting of the Medical Society of the State of North Carolina in the year 1959 and every two years thereafter. (1901, c. 245, s. 4; Rev., s. 4441; 1911, c. 62, s. 7; C. S., s. 7054; 1957, c. 1357, s. 1.)

§ 130-8. Regular and special meetings.—Each year there shall be four regular meetings of the State Board of Health, one of which shall be held during the annual meeting and conjointly with a general session of the Medical Society of the State of North Carolina at a time and place designated by the State Board of Health and the program committee of the Medical Society of the State of North Carolina at which time and place the State Health Director's annual report shall be submitted. The other three meetings shall be at such times and places as the president of the Board shall designate. Special meetings of the State Board of Health may be called by the president, or by a majority of the members of the State Board of Health, through the State Health Director. The executive committee of the State Board of Health shall meet at such times and places as the president of the Board may determine to be necessary, and he may call such meetings through the State Health Director. (1893, c. 214, s. 27; Rev., s. 4442; 1911, c. 62, s. 8; C. S., s. 7055; 1957, c. 1357, s. 1.)

§ 130-9. Powers and duties of the State Board of Health.—(a) The State Board of Health shall have the power and duty to determine the administrative and general policies to be followed in the administration and conduct of the public health program to protect and promote public health, and shall have the power and duty to adopt, amend, and rescind rules and regulations under and not inconsistent with the laws of this State necessary to carry out the provisions and purposes of this article and to enable the Board and its administrative staff to administer and enforce the public health laws of this State. Every regulation adopted by the State Board of Health shall state the date on which it takes effect, and a copy thereof, duly signed with the signature or facsimile of the signature of the State Health Director, shall be filed as required by G. S. 143, article 18, and shall be filed as a public record in the State Board of Health and a copy thereof shall be sent to each local health department within the State, and shall be published in the State Board of Health Bulletin, and also shall be published in such additional manner as the State Health Director or State Board of Health may from time to time determine, and shall be published in such additional manner as may be required by law. Certified copies of such regulations and the amendments thereto shall be received in evidence in all courts or other official proceedings in the State. The Board is required to hold public hearings prior to the adoption of any rule or regulation. All rules and regulations heretofore adopted by the State Board of Health shall remain in full force and effect until repealed by the State Board of Health or superseded by rules and regulations duly adopted by the State Board of Health. All rules and regulations adopted by the State Board of Health shall be enforced according to the laws of this State by its administrative staff or local health departments under the authority of

the State Board of Health. When the local health departments are required to enforce the rules and regulations of the State Board of Health, the Board may specify that they are to do so under the supervision of the State Board of Health.

(b) The State Board of Health is authorized to accept and allocate or expend any grants-in-aid for public health purposes which may be made available to the State by the federal government. This chapter is to be liberally construed in order that the State and its citizens may benefit fully from such grants-in-aid. The Board is further authorized and empowered to make such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for receiving such federal funds. Any monies so received are to be deposited with the State Treasurer and are to be expended by the State Board of Health for the public health purposes specified.

(c) The State Board of Health is authorized to establish and appoint as many special advisory committees as may be deemed necessary to advise and confer with the Board concerning the public health. Members of any special advisory committee shall serve without compensation but may be allowed actual and necessary travel and subsistence expenses when in attendance at meetings away from their places of residence.

(d) The State Board of Health shall not have any power or authority to regulate or restrict the license to practice of any person licensed to practice under General Statutes chapter 90.

(e) Nursing Homes.—

(1) Licensing.—The State Board of Health shall establish standards, provide rules and regulations for the operation of, and to inspect and license nursing homes as the same are hereinafter defined.

(2) Nursing Home Defined.—For the purposes of this section, a “nursing home” is defined as an institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing nursing or convalescent care for three or more persons unrelated to the licensee. A “nursing home” is a home for chronic or convalescent patients who, on admission, are not as a rule, acutely ill and who do not usually require special facilities, such as an operating room, X-ray facilities, laboratory facilities, and obstetrical facilities. A “nursing home” provides care for persons who have remedial ailments or other ailments, for which medical and nursing care is indicated; who, however, are not sick enough to require general hospital care. Nursing care is their primary need, but they will require continuing medical supervision.

(3) Penalties.—Any person establishing, conducting, managing, or operating any nursing home without a license shall be guilty of a misdemeanor, and upon conviction thereof shall be liable to a fine of not more than fifty dollars (\$50.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense, and each day of a continuing violation after conviction shall be considered a separate offense.

(4) Home for the Aged and Infirm Distinguished.—A “home for the aged and infirm,” usually designated as a boarding home, as distinguished from a “nursing home” is a place for the care of aged and infirm persons whose principal need is a home with such sheltered and custodial care as their age and infirmities require. In such homes, medical care is only occasional or incidental, such as may be required in the home of any individual or family for persons who are aged and infirm. The residents of such homes will not, as a rule, have remedial ailments or other ailments for which continuing skilled planned medical and nursing care is indicated. A major factor which distinguishes these homes is that the residents may be given congregate services as distinguished from the individualization of medical care required in “patient” care. A person may be accepted for sheltered or custodial care because of a disability which

does not require continuing planned medical care, but which does make him unable to maintain himself in individual living arrangements. In further distinguishing between a "nursing home" and a "home for the aged and infirm," it is recognized that a "nursing home" is not a place for the care of aged and infirm persons whose principal need is a home with such custodial and sheltered care as their age and infirmities require. In such "nursing homes" medical care is not merely occasional and incidental, such as may be required in the home of any individual or family. The residents of these "nursing homes" will, as a rule, have remedial ailments, or other ailments, for which continuing planned medical and skilled nursing care is indicated. A major factor which distinguishes these "nursing homes" is that the residents will require the individualization of medical care required in "patient" care.

- (5) **Operation of Nursing Home and Home for the Aged and Infirm in Same or Adjoining Buildings.**—Any person may operate a nursing home, as defined in subdivision (2) of this subsection, and a home for the aged and infirm, as defined in subdivision (4) of this subsection, in the same building or in two or more buildings adjoining or next to each other on the same site. In such cases, both the nursing home and the home for the aged and infirm must comply with standards prescribed by, and be licensed by, the State Board of Health; it shall not be necessary for these combination homes to secure a license from any other state agency; and other state agencies shall accept the standards prescribed by, and the license issued by, the State Board of Health. The State Board of Health shall consult with the State Board of Public Welfare regarding the standards for the boarding home area of the homes licensed by the State Board of Health as combination nursing homes and boarding homes for the aged and infirm.
- (6) **Evaluation of Residents in Homes for the Aged and Infirm.**—It shall be the duty of the State Board of Health, in cooperation with the State Board of Public Welfare, to prescribe the method for the evaluation of residents in homes for the aged and infirm in order to determine when any such residents are in need of professional medical and nursing care as provided in licensed nursing homes. (1957, c. 1357, s. 1; 1961, c. 51, s. 3; 1963, c. 859.)

Cross References.—As to duty to supervise sanitary and health conditions of prisoners, see § 148-10.

Editor's Note.—The 1961 amendment added subsection (e).

The 1961 amendatory act provided that it should not apply to any facility operated by or in conjunction with any hospital required to be licensed by the Medical Care Com-

mission.

The 1963 amendment added subdivisions (5) and (6) of subsection (e).

Validity.—Regulations and provisions for the vaccination of the inhabitants, and their enforcement by penalties, constitute a valid exercise of governmental police power for the public welfare, health and safety. *State v. Hay*, 126 N. C. 999, 35 S. E. 459 (1900).

§ 130-10. Employees of State Board of Health.—In order that the rules, regulations and directives of the State Board of Health may be enforced, the employees of the State Board of Health shall perform such functions as shall be delegated to them by the State Board of Health or by law. The State Board of Health may employ such persons as are deemed necessary by the Board for the purpose of carrying out the provisions of this chapter and the public health programs established thereunder. All such employees must meet the qualifications and conform to the provisions of chapter 126 of the General Statutes of North Carolina. (1957, c. 1357, s. 1.)

§ 130-11. Duties of the administrative staff of the State Board of Health.—The administrative staff of the State Board of Health shall have and exercise such

administrative duties and authority as may be assigned by the State Board of Health, including the following:

- (1) To enforce the State health laws and the rules and regulations established under and pursuant to the Public Health Law of North Carolina by the State Board of Health.
- (2) To investigate the causes of epidemics, and of infections, communicable, and other diseases affecting the public health so as to prevent, insofar as possible, such diseases; and to provide, under the rules and regulations of the Board, for the detection, reporting, prevention, and control of communicable, infectious, occupational, or any other diseases or health hazards considered dangerous to the public health.
- (3) To develop and carry out, with the approval of the State Board of Health, reasonable health programs, not inconsistent with law, that may be necessary for the protection and promotion of the public health and the control of disease.
- (4) To make sanitary and health investigations and inspections authorized by this chapter or by regulations prepared pursuant to said chapter or authorized by other applicable provisions of law under the direction of the State Board of Health, including the making of such investigations and inspections in cooperation with local health departments.
- (5) To conduct studies and research concerning the prevention of disease, the promulgation of life and the promotion of physical health and mental efficiency of the people of the State; including occupational health hazards and occupational diseases arising in and out of the course of employment in industry; and to make recommendations for the elimination or the reduction of such occupational health hazards. The industrial hygiene unit of the State Board of Health shall, under the direction and supervision of the Industrial Commission, carry out all of the provisions of the Workmen's Compensation Act with respect to occupational disease work, and the State Board of Health shall file with the Industrial Commission sufficient reports to enable it to carry out the provisions of the occupational disease law. After all occupational disease work required by the Industrial Commission has been completed, the State Board of Health may use the services of the industrial hygiene unit for such other work as the Board may deem advisable.
- (6) To receive gifts or donations of money, securities, equipment, supplies, realty, or any other property of any kind or description which may be used by the Board for the purpose of carrying out its public health programs. Any property so donated for such purposes is to be used in carrying out the public health programs.
- (7) To acquire by purchase, devise or otherwise, such equipment, supplies and other property, real or personal, as shall be necessary to carry out the public health programs.
- (8) To continue the use of the official seal, the impression and description of which are on file in the office of the Secretary of State. Copies of the records and proceedings and copies of documents and papers in the possession of the State Board may be authenticated with the seal of the Board, attested by the signature or a facsimile of the signature of the State Health Director, and when so authenticated shall be received in evidence to the same extent and effect as the originals.
- (9) To disseminate to the general public, through any desirable and feasible means, information in all matters pertaining to public health; to purchase, print, publish, and distribute free, or at cost, documents, reports, bulletins and health informational materials. Money collected from the distribution of documents, reports, bulletins and health information materials shall remain in the Board to be used to replace said materials.

- (10) To be the health advisors of the State, and to advise State officials in regard to the location, sanitary construction, and health management of all State institutions, and to direct the attention of the State to such health matters as in their judgment affect the industries, property, health, and lives of the people of the State. The staff shall make or cause to be made an inspection at least once in each year, and may at such other times as it may be requested to do so by the State Board of Public Welfare or other State agency or institution, of public institutions and facilities including those subject to license or inspection by such State Board of Public Welfare or other State agency or institution. The staff shall make a report as to the health conditions of such agencies or institutions, with suggestions and recommendations, to their respective boards of directors or trustees and/or the licensing or inspecting authority; and it shall be the duty of the persons in immediate charge of said institutions or facilities to furnish all assistance necessary for a thorough inspection.
- (11) To be the nutrition advisors to the institutions owned and operated by the State, or any county, and to advise said institutions in regard to the nutritional adequacy of diets served to the patients or inmates therein.
- (12) To make a biennial report to the General Assembly through the Governor.
- (13) To perform the duties set forth in G. S. 130-9 (e) in accordance with rules and regulations established by the State Board of Health. (1957, c. 1357, s. 1; 1961, c. 51, s. 4; c. 833, s. 14.)

Editor's Note.—The first 1961 amendment added subdivision (13). The second 1961 amendment, effective July 1, 1961, added the last two sentences to subdivision (5).

The first 1961 amendatory act provided that it should not apply to any facility operated by or in conjunction with any hospital required to be licensed by the Medical Care Commission.

§ 130-12. Duties of the State Health Director.—The State Health Director shall have and exercise the following authorities and duties in addition to all other authorities and duties conferred upon him by the State Board of Health:

- (1) To be the secretary, treasurer, and executive officer of the State Board of Health.
- (2) With the approval of the State Board of Health, to establish such organizational units as he may deem necessary for the effective administration and enforcement of the public health laws, rules and regulations, and to abolish, change, or extend any organizational units so created or established.
- (3) To prescribe, with the approval of the State Board of Health, regulations not inconsistent with law for the government of the administrative staff, the conduct of its employees, the distribution and performance of its business, and the custody, use and preservation of the records, papers, books, documents, and property pertaining to the proper functioning of the State Board of Health and its administrative staff.
- (4) By and with the approval of the State Board of Health, to hold hearings, administer oaths, subpoena witnesses and take testimony in all matters relating to the exercise and performance of the powers and duties vested in or imposed upon the Board.

Whenever the State Health Director is responsible for the performance of any act, he may authorize a responsible employee of the State Board of Health or a local health director to perform the action for him; provided, that the delegation by the State Health Director of the performance of any such action to a responsible employee shall not relieve the State Health Director from any responsibility placed upon him by this chapter. (1957, c. 1357, s. 1.)

ARTICLE 3.

Local Health Departments.

§ 130-13. **County health departments.**—Each county is hereby authorized to operate a health department. The policy-making body for the county health department shall be a county board of health composed of three or more ex officio and four public members. The ex officio members are the chairman of the board of county commissioners; the mayor of the city or town which is the county seat (if there is no such mayor, then the clerk of the superior court of the county) and the mayors of all other incorporated cities within the jurisdiction of the county health department which have a population in excess of 15,000 according to the latest decennial census; and the county superintendent of schools. The public members, heretofore selected for staggered four-year terms by the ex officio members, are to include a licensed physician, a licensed pharmacist, a licensed dentist, and a public-spirited citizen. Beginning with January, 1958, the ex officio members shall hold a meeting the first week in January of each year for the purpose of electing or appointing a public member to fill the vacancy created by the expiration of the term of a public member. When any of the three specified public members, namely a physician, a dentist, or a pharmacist, cannot be elected because there is no such person resident in the county, such place shall be filled with a public-spirited citizen. The terms of all members of a county board of health holding office on the date of the passage of this chapter shall expire on the same date that their respective terms would have expired had this chapter not been passed. At the expiration of the terms of the present members their successors shall be elected or appointed for a term of four years and until their successors have been duly elected or appointed and have qualified. If a vacancy shall arise among the public members, a majority of the ex officio members may call a meeting of all the ex officio members for the purpose of selecting such public members as may be necessary to fill the said vacancies, and such selection of public members shall be by majority vote of the ex officio members of the county board.

Upon the formation of a new county health department, the ex officio members shall name the four public members; one of the public members of the county board of health shall be appointed for a term of one year, one for a term of two years, one for a term of three years, and one for a term of four years; thereafter, all appointments shall be for a term of four years. The county board of health shall elect its own chairman. The county health director shall act as secretary to the county board of health, and a majority of the members of the county board of health shall constitute a quorum.

Those counties which now have special city-county boards of health, as authorized by any Private, Local, or Public-Local Act of the General Assembly, for the purpose of carrying on a joint health program, shall be exempted from the terms of this section, unless the special city-county board of health shall vote by a two-thirds majority of all members to dissolve said special board of health, and shall so notify the State Health Director, in writing; in which event, the provisions of this section shall apply.

All vacancies in the membership of the public members of the county board of health shall be filled by the ex officio members at the next meeting of the county board of health following the creation of the vacancy. In case any public member is a public official or officer, his duties as a member of said county board of health shall be deemed to be ex officio. Public members of any county board of health shall be eligible for reelection or reappointment. (1901, c. 245, s. 3; Rev., s. 4444; 1911, c. 62, s. 9; C. S., s. 7064; 1931, c. 149; 1941, c. 185; 1945, c. 99, c. 1030, s. 2; 1947, c. 474, s. 3; 1951, c. 92; 1957, c. 1357, s. 1; 1963, c. 359.)

Local Modification.—Caldwell: 1939, c. 366; Cumberland: 1935, c. 159; 1943, c. 91; Moore: 1943, c. 326, s. 2; Nash: 1941, c. 6, s. 1.

Editor's Note.—The 1963 amendment added the last sentence of the first paragraph. Compare the first sentence of the last paragraph.

Constitutional.—This section is not repugnant to Article XIV, § 7, of the State Constitution, which forbids the holding of two offices by one man at the same time, but simply adds further duties to the offices already created, which expire with the terms of office of each. *McCullers v. Board*, 158 N. C. 75, 73 S. E. 816 (1911).

Acts Not Upheld as Being Acts of De Facto Officers.—The acts of the Madison

County board of health, created by ch. 322, Public-Local Laws of 1931, cannot be upheld on the ground that, notwithstanding the act is void, its members were de facto officers, since a de jure board of health for the county had been properly constituted under this section. *Sams v. Board of Com'rs*, 217 N. C. 284, 7 S. E. (2d) 540 (1940).

§ 130-14. District health departments.—Under rules and regulations established by the State Board of Health, district health departments including more than one county may be formed in lieu of county health departments for each of the counties involved when the following condition or conditions exist:

- (1) When the funds derived from the tax levy made under the authority of G. S. 130-21 or such greater rate as the county may levy, plus available State and other funds, are insufficient to provide a minimum standard health department of one medical officer, two nurses, one sanitarian, one clerk, and a regular dental program, or
- (2) When, in the opinion of the State Board of Health, special problems or special projects arise which can be handled more advantageously on a district basis and the consolidation is approved by the State Board of Health and the board of health of each county involved.

Where two or more counties are combined into a district health department, the policy-making body for the district health department shall be a district board of health composed of three or more ex officio members and four public members. The ex officio members shall be selected by the State Health Director. At least one of the ex officio members must come from each participating county, and the ex officio members shall include at least one chairman of a board of county commissioners, one mayor of a town which is the county seat, and one county superintendent of schools. The ex officio members shall be appointed during the first week of each December following the general election in which members of the General Assembly are elected and shall serve for a period of two years from and after the date of appointment. The public members are to serve four-year, staggered terms, with one member being elected by the ex officio members at an annual meeting during the first week of January of each year. One of the public members shall be a licensed dentist, one a licensed physician, one a licensed pharmacist, and the other shall be a public-spirited citizen. At least one public member must reside in each county, but not more than one half of the public membership may come from one county. If more than four counties form a district, an additional public member may be added for each county in excess of four. Where any of the three specified public members, namely, a physician, a dentist, or a pharmacist, cannot be elected because there is no such person resident in the counties, such place shall be filled with a public-spirited citizen. The terms of all members of a district board of health holding office on the date of the passage of this chapter shall expire on the same date that their respective terms would have expired had this chapter not been passed. At the expiration of the terms of the present members, their successors shall be elected or appointed for the terms specified above and until their successors have been duly elected or appointed and have qualified.

Upon the formation of a new district health department, the public members shall be appointed by the chairmen of the boards of county commissioners of the counties within the district, meeting jointly; one for a term of one year, one for a term of two years, one for a term of three years, and one for a term of four years. All appointments of the public members thereafter shall be made by the ex officio members and said appointments shall be for a term of four years. In cases where more than three counties are combined into a district, there shall be at least one ex officio member, who is a chairman of the board of county commissioners, a mayor of the

town which is the county seat, or a county superintendent of schools from each county.

The district board of health shall elect its chairman. A majority of the members of the district board of health shall constitute a quorum and the district health director shall act as secretary to such board of health.

All vacancies in the ex officio membership of a district board of health caused by death, resignation, or any reason other than expiration of a term, shall be filled by appointments made by the State Health Director. Such appointments shall be made from any of the public officers or officials specified above, and the duties of such public officials as members of said district board of health shall be ex officio duties. Appointments to fill vacancies of ex officio members shall be for the unexpired term of the member or members causing the vacancy or vacancies and shall extend until the time for the next regular appointments of ex officio members. All vacancies in membership of the public members of a district board of health shall be filled by the ex officio members at the next meeting of the district board of health following the creation of the vacancy. A member appointed to fill a vacancy of a public member shall be from the same county as the member causing the vacancy. In case any public member is a public officer or official, his membership and duties on the district board of health as a public member shall be deemed to be ex officio.

In lieu of district boards of health as herein described, upon approval of the board of commissioners of each county in the district, counties forming or which have formed district health departments may establish and maintain separate county boards of health, organized as prescribed in G. S. 130-13, to perform for their respective counties the functions in relation to the district health department which would have been performed by the district board of health had one been created, and each such board may maintain a separate budget. (1957, c. 1357, s. 1.)

A district board of health is a creature of the legislature and has only such powers and authority as are given it by the legislature. State v. Curtis, 230 N. C. 169, 52 S. E. (2d) 364 (1949).

§ 130-15. Removal of board members.—Any member of a local board of health may be removed from office by the local board of health for cause. (1957, c. 1357, s. 1.)

§ 130-16. Compensation of board members.—The members of a local board of health shall serve without compensation, except that they may receive eight dollars (\$8.00) per diem for each day in attendance at a meeting of said board, plus necessary travel expenses; provided that this article shall not repeal any local act or acts which authorize compensation to members of a local board of health in excess of eight dollars (\$8.00) per diem plus necessary travel expenses. (1957, c. 1357, s. 1.)

§ 130-17. Powers and duties of local boards; expenditures.—(a) The local boards of health shall have the immediate care and responsibility of the health interests of their city, county or district. They shall meet quarterly, and any three members of the board, or the chairman of the board, shall be authorized to call a special meeting of the board, through the local health director, whenever in their or his opinion the public health interests of the city, county or district require it. All expenditures shall be made in accordance with appropriations duly made under the provisions of the County Fiscal Control Act.

(b) The local boards of health shall make such rules and regulations, not inconsistent with law, as are necessary to protect and advance the public health. Where such rules and regulations deal with subject matter also covered by rules and regulations of the State Board of Health, and there is an emergency, or a peculiar local condition or circumstance, requiring such action in the interest of public health, the rules and regulations of the local boards may be more stringent, but not less stringent, than those of the State Board. In other instances where there is a conflict between the rules and regulations of the State Board and the local boards, the rules and regulations of the State Board shall prevail. All rules and regulations heretofore

adopted by a local board of health shall remain in full force and effect until repealed by said local board of health or superseded by rules and regulations duly adopted by said local board of health.

(c) The rules and regulations of a local board of health shall apply to municipalities within the area over which the local board has jurisdiction, but the local board (other than a city board of health) shall not enact any rules and regulations applying to one municipality only, except where circumstances peculiar to that municipality require more stringent rules and regulations. Where municipal ordinances deal with subject matter also covered by rules and regulations of a local board of health having jurisdiction over an area which includes the municipality, and there is an emergency, or a condition or circumstance peculiar to the municipality requiring such action in the interest of public health, the municipal ordinance may be more stringent, but not less stringent, than the rules and regulations of the local board of health. In other instances where there is a conflict between the rules and regulations of the local board and the municipal ordinance, the rules and regulations of the local board of health shall prevail.

(d) Before any rules and regulations of a local board of health, or any amendments or alterations thereof, hereafter adopted, amended, or altered, shall have the force and effect of law, they shall be posted at the courthouse door of each county within the jurisdiction of the board of health, and a statement setting out the title of such rules and regulations together with a statement indicating that the same have been adopted, amended, or altered, and that a copy is posted at the courthouse door of each county within the jurisdiction of the said board of health and that a copy is on file in the office of each health department under the jurisdiction of the said board of health shall be published at least once a week for two successive weeks in a newspaper having general circulation within the area over which the board of health has jurisdiction.

(e) The local boards of health are hereby authorized to enter into contracts with the Veterans' Administration or any other governmental or private agency, or with any person, whereby the local board of health agrees to render services to or for such agency or person in exchange for a fee to cover the cost of rendering such service. This authority is to be limited to services voluntarily rendered and voluntarily received, and shall not apply to services required by statute, regulation, or ordinance to be rendered or received. The fees to be charged under the authority of this subsection are to be based upon a plan recommended by the local health director and approved by the local board of health and the State Health Director, and in no event is the fee charged to exceed the cost to the health department of rendering the service.

The fees collected under the authority of this subsection are to be deposited to the account of the health department so that they may be expended for public health purposes in accordance with the provisions of the County Fiscal Control Act. No individual employee is to receive any compensation over and above his regular salary as a result of rendering services for which a fee is charged. (1901, c. 245, s. 3; Rev., s. 4444; 1911, c. 62, s. 9; C. S., s. 7065; 1957, c. 1357, s. 1; 1959, c. 1024, s. 1; 1963, c. 1087.)

Local Modification.—Franklin, as to subsection (d): 1959, c. 1024, s. 1½.

Editor's Note.—The 1959 amendment rewrote subsection (d).

The 1963 amendment added subsection (e).

Limited Powers.—County boards of health and other administrative agencies, being creatures of statute, have only such powers as are conferred upon them by statute, either expressly or by necessary implication. *Champion v. Vance County Board of Health*, 221 N. C. 96, 19 S. E. (2d) 239 (1942).

This section gives no power to tax, nevertheless, it indicates that a county board of health is a subordinate governmental agency which of necessity must derive funds either from the State or county, or both, with which to pay salaries or other expenditures required in carrying on the health program of the State. *Champion v. Vance County Board of Health*, 221 N. C. 96, 19 S. E. (2d) 239 (1942).

Findings of Board Not Final.—The finding of the county board of health that the maintenance of a cemetery upon the watershed is a nuisance to the public health has

not the same force as the positive declarations of statute, and it may be shown in answer to a notice to show cause why an injunction should not be continued to the final hearing that the particular cemetery,

as maintained, was not a nuisance entitling the plaintiff to injunctive relief. *Board of Health v. Lewis*, 196 N. C. 641, 146 S. E. 592 (1929).

§ 130-18. Health director.—Each local board of health shall elect a health director meeting the qualifications set forth by the Merit System Council and subject to the provisions of chapter 126 of the General Statutes. Each local board of health may terminate the services of such local health director, subject to the provisions of chapter 126 of the General Statutes of North Carolina. Emergency and temporary appointments of a local health director may be made, when necessary, with the approval of the State Health Director. When, in the case of a vacancy, the local board of health fails for a period of sixty days or more to elect a health director, the State Health Director may appoint a health director to fill the vacancy. The health director so appointed shall serve until the local board of health elects a health director. (1957, c. 1357, s. 1.)

§ 130-19. Powers and duties of health director.—The local health director shall be the administrative head of the local health department, under the local board of health, and shall devote his full time to public health work, performing such duties as may be prescribed by law, by the local board of health, and by the State Board of Health. The local health director shall have general quarantine and sanitation authority, not inconsistent with State law, within the area which he serves. He shall disseminate public health information and promote the general public health. The county and city boards of education, the county and city superintendents of schools, the principals and teachers in the public schools, and the local health director shall cooperate to the end that better health will be promoted among the school children of the area served by such local health director. (1957, c. 1357, s. 1.)

§ 130-20. Abatement of nuisances.—Whenever and wherever a nuisance shall exist which in the opinion of the local health director is dangerous to the public health, it shall be his duty to notify in writing the person or persons responsible for its continuance, of the character of the nuisance and the means of abating it. The person or persons so notified shall proceed to abate the nuisance; provided that the person or persons so notified, within a reasonable time may appeal from the decision of the local health director to the local board of health. Upon receipt of notification of such appeal the local board of health shall grant a hearing, and if upon hearing of the matter, the local board of health finds that a nuisance does exist which is dangerous to the public health, then the person or persons responsible for the nuisance shall promptly proceed to abate it; provided that such person or persons may appeal from the decision of the local board of health to the superior court. If the person or persons responsible for the nuisance fails to abate it after notification by the local health director or after order to do so by the local board of health upon appeal to it or after order to do so by the superior court upon appeal to it, he shall be guilty of a misdemeanor.

Whenever and wherever a nuisance shall exist which is dangerous to the public health and such nuisance is of a character as to require in the interest of the public health immediate abatement or discontinuance the local health director may bring a proceeding in the superior court of the county in which the nuisance exists for the abatement of such nuisance and the superior court may upon hearing and for good cause shown enjoin the continuance of the condition creating the nuisance, irrespective of all other remedies at law. (1893, c. 214, s. 22; Rev., ss. 3446, 4450; 1911, c. 62, ss. 12, 13; 1913, c. 181, s. 3; C. S., ss. 7071, 7072; 1957, c. 1357, s. 1.)

Sufficient Evidence of a Nuisance.—Evidence that a stable is within four feet of a dwelling house, and because of its filthy condition those occupying the house were unable to eat, and the health officer has

given notice to abate the nuisance, is sufficient to convict under this section. *State v. Wilkes*, 170 N. C. 735, 87 S. E. 48 (1915).

Power to Burn Dwellings.—Neither town nor county commissioners have au-

thority under this section to burn a residence house to prevent the spread of contagious and infectious diseases. But in case they exceed their authority and burn a house no action will lie against them, in their official capacity, their liability, if any,

is personal. *Prichard v. Board*, 126 N. C. 908, 36 S. E. 353 (1900). This is a specific application of the general rule that a municipality is not liable for the torts committed by its agents or officers.

§ 130-21. Special tax for health purposes.—The board of county commissioners of each county is hereby authorized to levy at any time a special tax for the preservation and promotion of the public health. This includes authority to appropriate annually and from time to time public monies for the maintenance and operation of a health department, and authority to appropriate annually and from time to time public funds for the purchase, acquisition, erection, maintenance, alteration and repair of a building or buildings necessary to house and quarter a local health department; expenditures for all of these purposes are hereby declared to be necessary expenses, and the special approval of the General Assembly to levy special taxes therefor is hereby given. (1957, c. 1357, s. 1.)

Establishing Public Hospitals.—See *Armstrong v. Board*, 185 N. C. 405, 117 S. E. 388 (1923).

ments.—See *Atlantic Coast Line R. Co. v. Lenoir County*, 200 N. C. 494, 157 S. E. 610 (1931).

Maintenance of Public Welfare Depart-

§ 130-22. Municipal health departments.—The governing authorities of each city and town in North Carolina shall have the power and authority to appropriate annually and from time to time public monies for the maintenance and operation of a health department, including those which have heretofore been created and are existing as a joint city and county department of health, and to appropriate annually and from time to time public funds for the purchase, acquisition, erection, maintenance, alteration and repair of a building or buildings necessary to house and quarter such health department; expenditures for all of these purposes are hereby declared to be necessary expenses, and the special approval of the General Assembly to levy special taxes therefor is hereby given. (1957, c. 1357, s. 1.)

§ 130-22.1. Method of appointment and terms of office of members of municipal board of health.—From and after the first day of June, 1959 the governing body of any municipality then having or operating a municipal board of health is authorized by ordinance to fix the method of appointment or selection of the members of said board of health. The mayor and city manager, if there be a city manager, shall be ex officio members of the board with the power to vote. The remaining members of the board shall consist of three members of the governing body of such municipality, two licensed physicians and one licensed dentist.

This section shall not be construed as authorizing any municipality not having or operating a board of health on said date to establish, have or operate the same. (1959, c. 802.)

§ 130-23. County physician.—The county commissioners of each county are authorized to employ a county physician. The person employed to perform the duties of county physician shall not be required to take an oath, and shall not be required to post bond, shall serve at the will of the county commissioners, and shall not be deemed to be holding a public office within the meaning of article 14, § 7 of the Constitution of North Carolina. The salary of the county physician shall be paid by the board of county commissioners at such time and in such sum or amount as may be mutually agreed upon between the board of county commissioners and the county physician. The county physician shall have the right to employ any other regularly licensed physician of his county to perform any or all of the duties pertaining to his function when, in his judgment, it is desirable to do so; but the terms under which said physician is employed by the county physician shall be approved by the board of county commissioners. The board of county commissioners shall prescribe the duties, not inconsistent with law, the county physician is to perform.

The person employed as county physician may be appointed as county medical examiner under the provisions of G. S. 130-197. The county commissioners of each county are authorized to require the local health director to serve as county physician. (1901, c. 245, s. 3; Rev., s. 4445; 1911, c. 62, s. 11; 1913, c. 181, s. 2; C. S., s. 7069; 1955, c. 972, s. 3; 1957, c. 1357, s. 1.)

Fixing Compensation of County Physician.—See *McCullers v. Board*, 158 N. C. 75, 73 S. E. 816 (1911); *Halford v. Senter*, 169 N. C. 546, 86 S. E. 525 (1915).

ARTICLE 4.

Incorporation of Health Codes by Reference.

§ 130-24. Adoption of health codes by reference.—The State Board of Health, or any local board of health may, in its rules and regulations promulgated under authority of this chapter, adopt by reference a code or any parts thereof, without setting forth in full the code or parts thereof, provided that copies of such code or such parts thereof and any related documents are filed in accordance with G. S. 130-125. The requirements of this chapter regarding the publication and posting of rules and regulations shall not apply to any code or parts of any code or related documents adopted by reference in any rules and regulations. For the purposes of this article, "code" means a printed code, regulation or set of regulations, standard or set of standards, or ordinances prepared as a model or standard concerning, affecting, or relating to a subject regulated in the interests of the public health. "Related documents", as herein used, means any printed document or part thereof adopted by reference in a code directly, or by successive adoptions by reference through other printed documents. "Printed" includes lithographing and any other method of duplicating. (1957, c. 1357, s. 1.)

§ 130-25. Filing of codes adopted by reference.—Copies of such code or such parts thereof and the related documents adopted by reference under the provisions of this article shall be filed by the State Board of Health with the Secretary of State as required by G. S. 143-195, or shall be filed by the local boards of health with the clerk of the superior court in the county, or counties, within the jurisdiction of the local board of health. (1957, c. 1357, s. 1.)

§ 130-26. Changes in codes adopted by reference.—Changes in any code or related documents incorporated by reference into the rules and regulations of the State Board of Health or local boards of health shall not alter or affect the rules and regulations until the change has been adopted by the State Board of Health or local board of health as a part of its rules and regulations. (1957, c. 1357, s. 1.)

ARTICLE 5.

Mental Health Outpatient Clinics.

§§ 130-27 to 130-29: Repealed by Session Laws 1963, c. 1166, s. 1.

Cross Reference.—For present provisions as to local mental health clinics, see §§ 122-35.1 to 122-35.12.

ARTICLE 6.

State Laboratory of Hygiene.

§ 130-30. Laboratory established.—For the better protection of the public health there is established under the control and management of the State Board of Health a State Laboratory of Hygiene. (1905, c. 415; Rev., s. 3057; 1907, cc. 721, 884; 1911, c. 62, s. 36; C. S., s. 7056; 1957, c. 1357, s. 1.)

§ 130-31. To analyze potable waters.—The State Board of Health shall cause to be made monthly examinations of samples from all the public water supplies of

the State. Any water supply furnishing potable water to ten or more residences or businesses or combination of residences or businesses, shall be deemed a public water supply. The laboratory shall also examine monthly samples of all waters sold within the State in bottle or other package, and of all spring waters maintained for human consumption in connection with any hotel, park, or resort within the State. However, such spring waters need be examined only during periods when such hotels, parks, or resorts are open for the accommodation of the public. The State Board of Health shall also examine any other waters when a specimen is sent to the State Laboratory of Hygiene by a local health director or a licensed physician.

When examinations made pursuant to this article disclose that any waters contain intestinal microorganisms or other evidence of contamination, immediate notice shall be given to the suppliers of such waters, and such waters shall thereafter be examined at least weekly until evidence of contamination is no longer present. The State Board of Health may order the cessation of the supplying of water found to be contaminated, when such action is necessary for the protection of the public health. (1905, c. 415; Rev., s. 3057; 1907, cc. 721, 884; 1911, c. 62, s. 36; C. S., s. 7057; 1957, c. 1357, s. 1.)

§ 130-32. Fees for analyzing waters.—The State Board of Health shall collect from every supplier of water from a public water supply as defined in G. S. 130-31 and from every supplier of water in bottles or otherwise, an annual examination fee, payable quarterly, to be determined as follows: Where the gross sales for the previous year are two thousand dollars (\$2,000.00) or more, the annual fee is to be sixty-four dollars (\$64.00); where the gross sales for the previous year are one thousand five hundred dollars (\$1,500.00) or more but less than two thousand dollars (\$2,000.00), the annual fee is to be fifty dollars (\$50.00); where the gross sales for the previous year are one thousand dollars (\$1,000.00) or more but less than one thousand five hundred dollars (\$1,500.00), the annual fee is to be forty dollars (\$40.00); where the gross sales for the previous year are five hundred dollars (\$500.00) or more but less than one thousand dollars (\$1,000.00), the annual fee is to be thirty dollars (\$30.00); where the gross sales for the previous year are two hundred and fifty dollars (\$250.00) or more but less than five hundred dollars (\$500.00), the annual fee is to be twenty dollars (\$20.00); where the gross sales for the previous years are less than two hundred and fifty dollars (\$250.00), the annual fee is to be fifteen dollars (\$15.00). For any spring connected with a hotel, park or resort, an annual examination fee of fifteen dollars (\$15.00) shall be charged, in addition to the fees named above for spring water sold in bottle or otherwise.

In cases where water is supplied without charge, the fee for the water inspection shall be the same as if the supplier had charged each residence or business one dollar (\$1.00) per month for the water supplied.

When any person, firm or corporation is delinquent in the payment of the fees provided by this article, the State Health Director shall notify the Attorney General of such delinquency. The Attorney General may institute an action in the superior court of the county in which such delinquent person, firm or corporation resides or is situate for the collection of said delinquent fees. Any judgment rendered against a delinquent in such an action shall constitute a lien as provided by the terms of G. S. 1-234. (1905, c. 415; Rev., s. 3057; 1907, cc. 721, 884; 1911, c. 62, s. 36; C. S., s. 7059; 1935, c. 340; 1957, c. 1357, s. 1.)

§ 130-33. Duty of seller to make reports and transmit samples.—Every person, firm, or corporation supplying water, as set forth in G. S. 130-31, shall file with the treasurer of the State Board of Health annually in the month of January an affidavit as to the gross amount received from sales of water for the previous calendar year, unless such person, firm or corporation is paying the maximum fee for that year; or, if water were supplied without charge, the gross amount computed on the basis of the second paragraph of G. S. 130-32. Failure to file such affidavit

within the time prescribed shall subject the person, firm or corporation to the maximum fee for the current year.

Samples shall be transmitted within five days of receipt of sterilized containers from the State Laboratory of Hygiene. Transportation charges shall be paid by the sender. In the case of bottled waters, the State Board of Health is authorized to examine samples purchased by it in the open market, in addition to those furnished the Board under the provisions of this article. (1911, c. 62, s. 36; C. S., s. 7060; 1957, c. 1357, s. 1.)

§ 130-34. Nonresidents' fees.—Any nonresident person or firm, or foreign corporation who shall sell or offer for sale any water for consumption in this State shall pay the same examination fees as are paid by resident sellers; provided, that satisfactory evidence of purity furnished by the state health laboratories of other states agreeing to reciprocate in the matter with this State shall be accepted in lieu of the license fees. (1911, c. 62, s. 36; C. S., s. 7061; 1957, c. 1357, s. 1.)

§ 130-35. To make other examinations.—The State Board of Health is authorized to make in its laboratory such other examinations as the public health may require. (1957, c. 1357, s. 1.)

ARTICLE 7.

Vital Statistics.

§ 130-36. State Board of Health to enforce regulations.—The State Board of Health shall have charge of the registration of births and deaths, shall prepare the necessary instructions, forms and blanks for obtaining and preserving such records, and shall procure the faithful registration of the same in each local registration district as constituted in § 130-38, and in the Central Office of Vital Statistics at the capital of the State. The said Board shall be charged with the uniform and thorough enforcement of the provisions of this article throughout the State, and shall from time to time recommend to the General Assembly any additional legislation that may be necessary for this purpose. (1913, c. 109, s. 1; C. S., s. 7086; 1957, c. 1357, s. 1.)

§ 130-37. State Registrar.—The State Health Director shall be State Registrar of Vital Statistics, and shall have general supervision over the Central Office of Vital Statistics, which is hereby established. (1913, c. 109, s. 2; C. S., s. 7088; 1955, c. 951, s. 5; 1957, c. 1357, s. 1.)

§ 130-38. Registration districts.—For the purposes of this article, the State shall be divided into local registration districts as follows: Each city or incorporated town with a population of twenty-five hundred (2500) or over according to the latest decennial census, each township, each county, and each area served by a local health department, or any combination of the above governmental units, as designated by the State Registrar. (1913, c. 109, s. 3; C. S., s. 7088; 1955, c. 951, s. 5; 1957, c. 1357, s. 1.)

§ 130-39. Control of State Registrar over local districts.—The State Registrar shall have authority to abolish or consolidate existing registration districts, and/or create new districts when economy and efficiency and the interests of the public service may be promoted thereby. (1933, c. 9, s. 3; 1957, c. 1357, s. 1.)

Cited in *State v. Wilson*, 252 N. C. 640,
114 S. E. (2d) 786 (1960).

§ 130-40. Appointment of local registrar.—Whenever the State Board of Health fails to exercise the authority granted to it under the provisions of G. S. 130-41 to designate and appoint the local health director as local registrar for a county, the chairman of the board of county commissioners of such county shall appoint a local registrar of vital statistics for each incorporated city or town of

twenty-five hundred (2500) population and over and for each township or any combination thereof in his county, and shall notify the State Registrar in writing of the name and address of each local registrar so appointed. The term of office of each local registrar so appointed shall be four years, beginning with the first day of January of the year for which the local registrar is appointed, and until his successor has been appointed and has qualified, unless such office shall sooner become vacant by death, disqualification, operation of law, or other cause. Any vacancy occurring in the office of local registrar of vital statistics shall be filled for the unexpired term by the chairman of the board of county commissioners, except where the local health director is appointed under the provisions of G. S. 130-41. On the making of such appointment, the chairman of the board of county commissioners shall notify the State Registrar, in writing, of the name and address of the local registrar so appointed. At least ten days before the expiration of the term of office of any local registrar appointed under the provisions of this section, a successor shall be appointed by the chairman of the board of county commissioners. Except for local health directors serving as local registrar, each local registrar shall be a bona fide resident of the local registration district for which he is appointed; and removal from the district shall terminate his appointment. (1913, c. 109, s. 4; 1915, c. 20; C. S., s. 7089; 1955, c. 951, s. 6; 1957, c. 1357, s. 1.)

Local Modification.—Henderson: 1959, c. 256, s. 3; Transylvania: 1959, c. 661.

§ 130-41. Local health director may act as registrar.—The State Board of Health shall have authority and power to designate and appoint the local health director as registrar for the area over which he has jurisdiction, or any fractional part or parts thereof, when such action shall be deemed wise. In such case, the fees accruing from the vital statistics registration service, where such service is performed by the local health director under such appointment, shall be used by the local health department for health services. (1933, c. 9, s. 3; 1955, c. 951, s. 7; 1957, c. 1357, s. 1.)

Local Modification.—Henderson: 1959, c. 256, s. 4.

§ 130-42. Removal of local registrar.—Any local registrar who, in the judgment of the State Registrar, fails or neglects to discharge efficiently the duties of his office as laid down in this article, or who fails to make prompt and complete returns of all births and deaths, as required by this article, shall be forthwith removed from his office by the State Registrar, and such other penalties may be imposed as are provided under the provisions of this article. (1913, c. 109, s. 4; C. S., s. 7090; 1957, c. 1357, s. 1.)

§ 130-43. Appointment of deputy and sub-registrars.—Each local registrar shall, immediately upon his acceptance of appointment as such, appoint a deputy, whose duty it shall be to act in his stead in case of absence, illness, or disability, and such deputy shall in writing accept such appointment, and be subject to all rules and regulations governing local registrars. When it may appear necessary, the local registrar is hereby authorized, with the approval of the State Registrar, to appoint one or more suitable persons to act as sub-registrars, who shall be authorized to receive certificates and to issue burial-transit permits in and for such portions of the district as may be designated; and each sub-registrar shall enter the date the certificate was received by him and shall forward all certificates to the local registrar of the district within ten days, and in all cases before the third day of the following month: Provided, that each sub-registrar shall be subject to the supervision and control of the State Registrar and may be by him removed for neglect or failure to perform his duties in accordance with the provisions of this article or the rules and regulations of the State Registrar, and he shall be subject to the same penalties for neglect of duties as the local registrar. (1913, c. 109, s. 4; C. S., s. 7091; 1955, c. 951, s. 8; 1957, c. 1357, s. 1.)

§ 130-44. Burial-transit permit authorizing burial or other disposition of body.—The body of any person whose death occurs in this State, or which shall be found dead therein, shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of, or removed from or into any registration district, or be temporarily held pending further disposition more than seventy-two hours after death, unless a burial-transit permit authorizing a burial, removal, or other disposition thereof shall have been properly issued by the local registrar of the registration district in which the death occurred or the body was found. No such burial-transit permit shall be issued by any registrar until a complete and satisfactory certificate of death has been filed with him as hereinafter provided unless otherwise authorized by the State Registrar. No dead body may be transported into a registration district in North Carolina for burial or other disposition unless accompanied by a burial-transit permit issued in accordance with the law and health regulations of the place where the death occurred. Such permit shall be authority for burial or other disposition of the body. No local registrar shall receive any fee for the issuance of burial-transit permits under this article. (1913, c. 109, s. 5; 1915, c. 164, s. 1; C. S., s. 7092; 1955, c. 951, s. 9; 1957, c. 1357, s. 1.)

§ 130-45. Fetal deaths to be registered.—A stillborn child shall be registered as a fetal death on a fetal death (stillbirth) certificate when the child has advanced to at least the twentieth (20th) week of uterogestation. The fetal death certificate shall contain such information as may be prescribed by the State Registrar. A burial-transit permit shall be required prior to any final disposition of the fetus, or prior to removing the fetus from or into any registration district. The medical certificate of the cause of death shall be signed by the attending physician, if any, and shall state the cause of fetal death. When a fetal death is attended by a midwife, the midwife shall sign as the attendant, but shall not sign the medical certificate of fetal death; but such cases, and fetal deaths occurring without attendance of either physician or midwife, shall be treated as deaths without medical attendance as provided for in G. S. 130-47. (1913, c. 109, s. 6; C. S., s. 7093; 1933, c. 9, s. 2; 1951, c. 1091, s. 1; 1955, c. 951, s. 10; 1957, c. 1357, s. 1.)

§ 130-46. Contents of death certificate.—The certificate of death shall contain, as a minimum, those items prescribed and specified in the standard certificate of death as prepared by the national agency in charge of vital statistics except as the same may be changed or amended by the North Carolina State Registrar of Vital Statistics.

The personal and statistical particulars shall be authenticated by the signature of the informant, who may be any competent person acquainted with the facts.

The statement of facts relating to the disposition of the body shall be signed by the funeral director or person acting as such.

The medical certificate shall be made and signed by the physician, if any, who last treated the deceased for the disease or injury which caused death, and such physician shall specify the time in attendance, the time he last saw the deceased alive, and the hour of the day at which death occurred, and he shall further state the cause of death. Indefinite and unsatisfactory terms, denoting only symptoms of disease or conditions resulting from disease, will not be held sufficient for the issuance of a burial-transit permit; and any certificate containing any such indefinite or unsatisfactory terms, as defined by the State Registrar, shall be returned to the physician or person making the medical certificate for correction and more definite statement. In deaths in hospitals, institutions, or of nonresidents, the physician shall supply the information required above, if he is able to do so, and may state where, in his opinion, the disease was contracted.

It shall be the duty of the physician making the medical certification as to the cause of death to complete the medical certification prior to interment but in no event more than seventy-two (72) hours after death. The said physician may, in appropriate cases, designate the cause of death as unknown pending an autopsy or upon some

other reasonable cause for delay, with the physician designating the cause of death as unknown being responsible for sending the supplementary information to the local registrar as soon as it is obtained. (1913, c. 109, s. 7; C. S., s. 7094; 1949, c. 161, s. 1; 1955, c. 951, s. 11; 1957, c. 1357, s. 1; 1963, c. 492, ss. 1, 4.)

Editor's Note.—The 1963 amendment “funeral director” for “undertaker” in the added the last paragraph and substituted third paragraph.

§ 130-47. Death without medical attendance; duty of funeral director and officials; approval required for cremation within seventy-two hours of death.—In case of death occurring without medical attendance, it shall be the duty of the funeral director or person acting as such to notify the local registrar of such death, and when so notified the registrar shall, prior to the issuance of the burial-transit permit, inform the local health director and refer the case to him for immediate investigation and certification; provided, the board of county commissioners of any county may designate the coroner to perform such duties in lieu of the local health director, if the coroner is a licensed physician, and when such designation is made by the board of county commissioners, the registrar shall, prior to the issuance of the burial-transit permit inform the coroner and refer the case to him for immediate investigation and certification. When any board of county commissioners designates the coroner to perform such duties in lieu of the local health director, the board of county commissioners may pay the coroner a fee or salary for such investigation, in an amount to be determined by the board of county commissioners. Nothing herein contained shall prevent any medical examiner appointed under the provisions of article 21 of this chapter from making such investigation and certification when required to do so under the provisions of said article. When there is no medical examiner, local health director or person acting as local health director, the registrar shall refer the case to the coroner or other proper officer for investigation and certification, who shall make the certificate of death required for a burial-transit permit, stating therein the name of the disease causing death; or, if from external causes, (i) the means of death, and (ii) whether (probably) accidental, suicidal, or homicidal; and shall, in any case, furnish such information as may be required by the State Registrar in order properly to classify the death.

No cremation of a dead body, in cases of death without medical attendance, may take place within a period of seventy-two (72) hours following death without approval of either the county medical examiner or local health director, or district solicitor of the superior court of the district in which the person died. (1913, c. 109, s. 8; C. S., s. 7095; 1951, c. 1091, s. 2; 1955, c. 972, s. 4; 1957, c. 1357, s. 1; 1963, c. 492, ss. 3, 4.)

Editor's Note.—The 1963 amendment “funeral director” for “undertaker” near added the second paragraph and substituted the beginning of the section.

§ 130-48. Preparation of death certificates for members of the armed forces dying outside of the United States.—The State Registrar of Vital Statistics, upon presentation of an official notice of death from the United States government for a member of the armed forces dying outside of the United States, shall prepare a death certificate showing such facts pertaining to such death as may be available from the government notice. Such certificate shall be placed on file in the office of the State Registrar and shall be permanently preserved. The State Registrar of Vital Statistics shall forward a copy of such certificate to the register of deeds of the county of the last known residence of such deceased person. Certified copies of such certificates shall be prepared by the State Registrar or his duly authorized agent, upon request and such copies shall be accepted as prima facie evidence of the facts stated therein. (1949, c. 174; 1957, c. 1357, s. 1.)

§ 130-49. Funeral director to file death certificate and obtain burial-transit permit; extension of time for filing death certificate, etc., and obtaining burial-transit permit.—The funeral director or any other person disposing of or re-

moving a dead body or the remains, shall file the certificate of death, or fetal death, with the local registrar of the district in which the death occurred. He shall obtain a burial-transit permit prior to any disposition or removal of the body or remains. He shall file the certificate of death or fetal death with the local registrar prior to obtaining the burial-transit permit unless otherwise authorized by the State Registrar. He shall obtain the required personal and statistical particulars from the person best qualified to supply them, over the signature and address of his informant, and shall present the certificate to the attending physician, if any, and if none to the medical examiner, local health director or coroner, as directed by the local registrar, for the medical certificate of the cause of death and other particulars necessary to complete the record, as specified in G. S. 130-46 and 130-47. He shall then state the facts required relative to the date and place of burial, over his signature and with his address, and present the completed certificate to the local registrar in order to obtain a burial-transit permit for burial, removal or other disposition of the body. He shall deliver the burial-transit permit to the person in charge of the place of burial, before interring or otherwise disposing of the body; or shall attach the burial-transit permit to the box containing the corpse, when shipped by any transportation company, this burial-transit permit to accompany the corpse to its destination, where, if within the State, it shall be delivered to the person in charge of the place of burial.

The State Registrar may, by regulation and upon such conditions as he may prescribe to assure compliance with the purposes of the Vital Statistics Laws of North Carolina, provide for the extension of the time periods prescribed in this article for the filing of death certificates, fetal death certificates, medical certifications of cause of death, and for the obtaining of burial-transit permits in cases in which compliance with the applicable prescribed period would result in undue hardship. (1913, c. 109, s. 9; C. S., s. 7096; 1955, c. 951, s. 12; 1957, c. 1357, s. 1; 1963, c. 492, ss. 2, 4.)

Editor's Note.—The 1963 amendment “funeral director” for “undertaker” near added the second paragraph and substituted the beginning of the section.

§ 130-50. Sales of coffins or caskets regulated.—Every person, firm, or corporation selling a coffin or casket shall keep a record showing the name of the purchaser, purchaser's post-office address, name of deceased, date of death, and place of death of deceased, which record shall be open to inspection of the State Registrar or his agent at all times. On the first day of each month the person, firm, or corporation selling coffins or caskets shall report to the State Registrar each sale for the preceding month, on a blank provided for that purpose. But no person, firm, or corporation selling coffins or caskets to dealers or funeral directors only shall be required to keep such record, nor shall such report be required from funeral directors when they have direct charge of the disposition of a dead body. Every person, firm, or corporation selling a coffin or casket at retail, and not having charge of the disposition of the body, shall enclose within the casket a notice furnished by the State Registrar, calling attention to the requirements of the law, a blank certificate of death, and the rules and regulations of the State Board of Health concerning the burial or other disposition of a dead body. (1913, c. 109, s. 9; C. S., s. 7097; 1957, c. 1357, s. 1; 1963, c. 492, s. 4.)

Editor's Note.—The 1963 amendment substituted “funeral directors” for “undertakers” in two places in the third sentence.

§ 130-51. Contents of burial-transit permit.—The burial-transit permit shall contain, as a minimum, those items prescribed and specified by the national agency in charge of vital statistics except as the same may be amended or changed by the North Carolina State Registrar of Vital Statistics. (1913, c. 109, s. 10; C. S., s. 7098; 1955, c. 951, s. 13; 1957, c. 1357, s. 1.)

§ 130-52. Interment without burial-transit permit forbidden.—No person in charge of any premises in which interments are made shall inter or permit the interment, disinterment, or other disposition of any body unless it is accompanied by a

burial-transit permit, as herein provided. Such person shall endorse upon the burial-transit permit the date of interment, or disinterment over his signature, and shall return all burial-transit permits so endorsed to the local registrar of his district within ten days from the date of disposal. He shall also keep a record of all bodies interred or otherwise disposed of on the premises under his charge, in each case stating the name of each deceased person, place of death, date of burial or disposal, and the name and address of the funeral director; which record shall at all times be open to official inspection. When burying a body in a cemetery or burial ground having no person in charge, the funeral director, or person acting as such, shall sign the burial-transit permit, giving the date of burial, and shall write across the face of the burial-transit permit the words "No person in charge," and file the burial-transit permit within ten days with the registrar of the district in which the cemetery is located. (1913, c. 109, s. 11; C. S., s. 7099; 1955, c. 951, s. 14; 1957, c. 1357, s. 1; 1963, c. 492, s. 4.)

Editor's Note.—The 1963 amendment substituted "funeral director" for "undertaker" in the third and fourth sentences.

§ 130-52.1. Registration of divorces and annulments; duty of clerk of court granting divorce, etc.; costs and fees; copies of record.—On or before the fifteenth day of each month the clerks of the superior courts of this State and the clerks of all other courts authorized by law to grant divorces or annulments of marriage shall transmit to the Office of Vital Statistics of the State Board of Health in Raleigh, on forms prescribed and furnished by it, a record of each and every decree of divorce or annulment granted by the said courts during the preceding calendar month, giving the names of the parties and such other data as may be required by such forms. The sum of one dollar (\$1.00) shall be taxed as a part of the costs in the cause in which the decree of divorce or annulment is granted and the same shall be collected by the clerk of the court as costs. With each monthly report, the clerk shall also transmit to the Office of Vital Statistics one half of the cost above provided for, to be used to recompense the State partially for the expense of filing and keeping such records. Upon request, the Office of Vital Statistics shall furnish a true copy of any such record, which may be, but is not required to be, photographic, upon the payment to the office of a fee of one dollar (\$1.00), and such true copy shall be competent evidence in any court or other proceeding in this State with like force and effect as the original. The moneys received by the office pursuant to this section shall be turned over to the State Treasurer and paid into the General Fund of the State. The Office of Vital Statistics is hereby authorized and empowered to do all things necessary to implement and carry out the provisions of this section. (1957, c. 983.)

§ 130-52.2. Registration of marriage certificates; duty of registers of deeds; forms; furnishing copies; copies as evidence.—On or before the fifteenth day of each month the registers of deeds of the several counties of this State shall transmit to the Office of Vital Statistics of the State Board of Health in Raleigh, on forms prescribed and furnished by it, a record of each and every marriage ceremony performed in his county during the preceding calendar month, a record of which has been filed in his office as required by applicable law. The form prescribed by the Office of Vital Statistics of the State Board of Health in Raleigh shall contain and set forth in substance the forms and information required by G. S. 51-16, as amended, as a minimum requirement, and shall be the official form of a marriage license, certificate of marriage, and application for marriage license, issued by the register of deeds. The form so prescribed shall contain additional information in order to conform to the minimum requirements of the national agency in charge of vital statistics. Each form signed and issued by the register of deeds, assistant register of deeds, or deputy register of deeds shall constitute an original or duplicate original. Upon request, the Office of Vital Statistics shall furnish a true copy of any such record, which may be, but is not required to be, photographic, upon the payment to the office of a fee of one dollar (\$1.00), and such true copy shall be competent

evidence in any court or other proceeding in this State with like force and effect as the original. The moneys received pursuant to this section shall be paid into the general fund of the State. The Office of Vital Statistics is authorized to do all things necessary to implement and carry out the provisions of this section. (1961, c. 862.)

Editor's Note.—The act inserting this section was effective as of Jan. 1, 1962.

§ 130-53. Registration of births.—The birth of every child born in this State shall be registered as hereinafter provided. (1913, c. 109, s. 12; C. S., s. 7100; 1957, c. 1357, s. 1.)

§ 130-54. Birth certificate to be filed within five days.—Within five days after the date of each live birth there shall be filed with the local registrar of the district in which the birth occurred a certificate of such birth, which certificate shall be upon the form adopted by the State Board of Health, with a view of procuring a full and accurate report with respect to the contents prescribed in G. S. 130-58. Where a physician, midwife, or person acting as midwife, was in attendance upon the birth, it shall be the duty of such person to file the required certificate. Where there was no physician, midwife, or person acting as midwife, in attendance upon the birth, it shall be the duty of the father or mother of the child, the householder or owner of the premises where the birth occurred, or the manager or superintendent of the public or private institution where the birth occurred, each in the order named, within five days after the date of the birth, to report the fact to the local registrar. In such case and in case the physician, midwife, or person acting as midwife, in attendance is unable, by diligent inquiry, to obtain any of the items specified on the certificate, it is the duty of the local registrar to secure from the person reporting the birth, or from any other person who knows the facts, information to enable him to prepare the required certificate of birth, and it is the duty of the person questioned to answer correctly to the best of his knowledge all such questions, and to verify his statement by his signature, when requested to do so by the local registrar. (1913, c. 109, s. 13; 1915, c. 85, s. 1; C. S., s. 7101; 1957, c. 1357, s. 1.)

§ 130-55. Registration of birth certificate more than five days and less than four years after birth.—Any birth may be registered more than five days and less than four years after birth in the same manner as births are registered under this article within five days of birth. Such registration shall have the same force and effect as if the registration had occurred within five days of birth: Provided, such registration shall not relieve any person of criminal liability for the failure to register such birth within five days of birth as required by G. S. 130-54. (1941, c. 126; 1957, c. 1357, s. 1.)

§ 130-56. Registration of birth certificate four years or more after birth.—The State Board of Health is authorized to promulgate rules and regulations under which any birth which has not been registered with the Office of Vital Statistics within four years after birth, as provided in G. S. 130-54 and 130-55, may be registered with the register of deeds of the county in which the birth occurred: Provided, such registration shall not relieve any person of criminal liability for the failure to register such birth within five days of birth as required by G. S. 130-54. Each such birth must be registered in duplicate on forms approved by the State Board of Health and furnished by the State Registrar. The register of deeds shall forward the original and duplicate certificate to the Office of Vital Statistics for final approval. If the certificate complies with the rules and regulations of the State Board of Health and has not been previously registered, the State Registrar shall file the original and return the duplicate to the register of deeds for recording.

Certificates registered with the register of deeds under this section shall contain the date of the delayed filing and be distinctly marked "Delayed" and those altered after being filed shall contain the date of alteration and be distinctly marked "Altered."

All copies of birth certificates registered under the provisions of this section, properly certified by the State Registrar, shall have the same evidentiary value as those registered within five days after birth.

The register of deeds shall be entitled to a fee of one dollar (\$1.00) for such registration, to include the issuance of one certified copy, and a fee of fifty cents (50¢) for each additional certified copy issued by him, to be paid by the applicant. (1941, c. 126; 1957, c. 1357, s. 1.)

Local Modification.—Beaufort: 1957, c. 640.

§ 130-57. Register of deeds may perform notarial acts.—The register of deeds is hereby authorized to take acknowledgments, administer oaths and affirmations, and to perform all other notarial acts necessary for the registration or issuance of certificates relating to births, deaths or marriages. The register of deeds shall be entitled to a fee of fifty cents (50¢) for each acknowledgment, oath, affirmation, or other notarial act performed by him, when such acknowledgment, oath, affirmation, or other notarial act is sealed with his official seal, such fee or fees to be paid by the applicant.

All acknowledgments taken, affirmations or oaths administered, or other notarial acts performed by the register of deeds relating to the registration of certificates of births, deaths or marriages, prior to June 16, 1959, are hereby validated and in all respects confirmed. (1945, c. 100; 1957, c. 1357, s. 1; 1959, c. 986.)

Editor's Note.—Prior to the 1959 amendment this section related only to birth certificates.

§ 130-58. Contents of birth certificate.—The certificate of birth shall contain, as a minimum, those items prescribed and specified on the standard certificate of birth as prepared by the national agency in charge of vital statistics, except as the same may be amended or changed by the North Carolina State Registrar of Vital Statistics: Provided, that in case of a child born out of wedlock, the father's name shall not be shown on the certificate without his written consent under oath, and, provided, further, that in case of a child born out of wedlock, the last name of the child shall be the same as that of the mother, or, if requested in writing and under oath, the name of the child shall be the same as the person or persons caring for the child when such request is made by both the mother of the child and the person or persons caring for the child, or, if the mother of the child is deceased, or her whereabouts shall have been unknown for a period of three years, then the person or persons caring for such child may make such a request for such change. Where it has been adjudicated in a court of competent jurisdiction that a mother has abandoned her child, then the consent required of the mother by this section shall not be necessary. (1913, c. 109, s. 14; C. S., s. 7102; 1949, c. 161, s. 2; 1955, c. 951, s. 15; 1957, c. 1357, s. 1.)

§ 130-59. Validation of irregular registration of birth certificates.—The registration and filing with the Office of Vital Statistics of the birth certificate of any person whose birth has not been registered within five days of birth under G. S. 130-54 is hereby validated. All copies of birth certificates filed prior to April 9, 1941, properly certified by the State Registrar, shall have the same evidentiary value as if the birth had been registered within five days of such birth as provided by G. S. 130-54. (1941, c. 126; 1957, c. 1357, s. 1.)

§ 130-60. Blank furnished for report of name.—When any certificate of birth of a living child is presented without the statement of the given name, then the local registrar shall make out and deliver to the parents of the child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed, and returned to the local registrar as soon as the child shall have been named. (1913, c. 109, s. 15; C. S., s. 7103; 1957, c. 1357, s. 1.)

§ 130-61. Institutions to keep records of inmates.—All superintendents or managers, or other persons in charge of hospitals, lying-in or other institutions, public

or private, to which persons resort for treatment of diseases, or confinement, or to which persons are committed by process of law, shall make a record of all the personal and statistical particulars relative to the inmates or patients in their institutions. Such records shall be in the form of the certificates provided for by this article, as directed by the State Registrar. This information must be obtained at the time of the inmate's or patient's admittance or as soon thereafter as practicable, but in any event prior to the discharge of said inmate or patient. In case of persons admitted or committed for treatment of disease, the physician in charge shall specify for entry in the record the nature of the disease, and where, in his opinion it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself if it is practicable to do so; and when they cannot be so obtained, they shall be obtained in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts. (1913, c. 109, s. 16; C. S., s. 7104; 1957, c. 1357, s. 1.)

Editor's Note.—See note, 13 N. C. Law Rev. 326, on "Admissibility of Medical Records in Evidence."

§ 130-62. Certificate of identification in lieu of birth certificate where parentage cannot be established.—A certificate of identification for a foundling child whose parentage cannot be established shall be filed by the juvenile court which determines that the child is a foundling, with the local registrar of vital statistics of the district in which the child was found. This certificate of identification shall contain such information and be in such form as the State Board of Health may prescribe and shall serve in lieu of a birth certificate. (1941, c. 297, s. 3; 1957, c. 1357, s. 1.)

§ 130-63. Certificate of identification for child of foreign birth.—In the case of an adopted child born in a foreign country and having legal settlement in this State, the State Registrar shall, upon the presentation of a certified copy of the original birth certificate from the country of birth and a copy of the final order of adoption signed by the clerk of court or other appropriate official prepare a certificate of identification for such child. The certificate shall contain the same information as is required by G. S. 48-29 (a) for children adopted in this State, except that the country of birth shall be specified in lieu of the state of birth. (1949, c. 160, s. 2; 1955, c. 951, s. 16; 1957, c. 1357, s. 1.)

§ 130-64. State Registrar to supply blanks; to perfect and preserve birth and death certificates.—The State Registrar shall prepare, have printed, and supply to all registrars all blanks and forms used in registering, recording, and preserving the returns, or in otherwise carrying out the purposes of this article; and shall prepare and issue such detailed instructions as may be required to procure the uniform observance of its provisions and the maintenance of a perfect system of registration; and no other blanks shall be used than those supplied by the State Registrar. He shall carefully examine the certificate received monthly from the local registrars, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory. All physicians, midwives, informants, or funeral directors, and all other persons having knowledge of the facts are hereby required to supply, upon a form provided by the State Registrar or upon the original certificate, such information as they may possess regarding any birth or death upon demand of the State Registrar, in person, by mail, or through the local registrar.

The State Registrar shall further arrange, bind, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive and continuous index of all births and deaths registered. Adequate fireproof space in one of the State buildings for filing the birth and death records made and returned under this article shall be provided by the General Services Division. No persons other than those authorized by the State Registrar shall have access to any original

birth and death records. (1913, c. 109, s. 17; C. S., s. 7105; 1941, c. 297, s. 2; 1949, c. 160, s. 3; 1955, c. 951, s. 17; 1957, c. 1357, s. 1; 1963, c. 492, s. 4.)

Editor's Note.—The 1963 amendment takers" in the last sentence of the first substituted "funeral directors" for "under- paragraph.

§ 130-64.1. Amendment of birth and death certificates.—No certificate of birth or death, after its acceptance for registration by the State Registrar, and no other record made in pursuance of this article, shall be altered or changed in any respect otherwise than by amendment requests properly dated, signed and witnessed: Provided, that the State Registrar may promulgate rules and regulations governing the type and amount of proof of the correctness of the change or amendment which must accompany the request for a change or amendment in the certificate of birth or death, or other record made in pursuance of this article: Provided, further, that a new certificate of birth shall be made by the State Registrar whenever:

- (1) Proof is submitted to the State Registrar that the previously unwed parents of a person have intermarried subsequent to the birth of such person;
- (2) When notification is received by the State Registrar from the clerk of a court of competent jurisdiction of a judgment, order, or decree disclosing different or additional information relating to the parentage of a person;
- (3) Satisfactory proof is submitted to the State Registrar that there has been entered in a court of competent jurisdiction a judgment, order, or decree disclosing different or additional information relating to the parentage of a person.

When a new certificate of birth is made the State Registrar shall substitute such new certificate for the certificate of birth then on file, if any, and shall forward a copy of the new certificate to the register of deeds of the county of birth, and the copy of the certificate of birth on file with the register of deeds, if any, shall be replaced with the new copy. The State Registrar shall place the original certificate of birth and all papers pertaining to the new certificate of birth under seal. Such seal shall not be broken except by an order of a court of competent jurisdiction. Thereafter, when a certified copy of the certificate of birth of such person is issued, it shall be a copy of the new certificate of birth, except when an order of a court of competent jurisdiction shall require the issuance of a copy of the original certificate of birth. (1957, c. 1357, s. 1.)

§ 130-65. To inform registrars as to dangerous diseases.—The State Registrar shall inform all registrars what diseases are to be considered infectious, contagious, or communicable and dangerous to the public health, as decided by the State Board of Health, in order that when deaths occur from such diseases proper precautions may be taken to prevent their spread. (1913, c. 109, s. 17; C. S., s. 7106; 1955, c. 951, s. 18; 1957, c. 1357, s. 1.)

§ 130-66. Birth certificate as evidence.—Certified copies of birth certificates shall be accepted by public school authorities in this State as prima facie evidence of the age of children registering for school attendance, and no other proof need be required. In addition, certified copies of birth certificates shall be required by all factory inspectors, and employers of youthful labor, as prima facie proof of age, and no other proof need be required. When, however, it is not possible to secure such certified copy of birth certificate for any child, the school authorities and factory inspectors may accept as secondary proof of age any competent evidence by which the age of persons is usually established. (1913, c. 109, s. 17; C. S., s. 7107; 1957, c. 1357, s. 1.)

§ 130-67. Church and other records filed and indexed; fees for transcript.—If any cemetery company or association, or any church or historical society or association, or any other company, society, or association, or any individual, is in

possession of any record of births or deaths which may be of value in establishing the genealogy of any resident of this State, such company, society, association, or individual may file such record or a duly authenticated transcript thereof with the State Registrar, and it shall be the duty of the State Registrar to preserve such record or transcript and to make a record and index thereof in such form as to facilitate the finding of any vital information contained therein. Such record and index shall be open to inspection by the public, subject to such reasonable conditions as the State Registrar may prescribe. If any person desires a transcript of any record filed in accordance herewith, the State Registrar shall furnish the same upon application, together with a certificate that it is a true copy of such record, as filed in his office, and for his services in so furnishing such transcript and certificate he shall be entitled to a fee of fifty cents (50¢) per hour or fraction of an hour necessarily consumed in making such transcript or photocopy, and to a fee of fifty cents (50¢) for the certificate, which fees shall be paid by the applicant. (1913, c. 109, s. 17; C. S., s. 7108; 1957, c. 1357, s. 1.)

§ 130-68. Clerk of court to furnish State Registrar with facts as to paternity of illegitimate children judicially determined.—Upon the entry of a judgment determining the paternity of an illegitimate child, the clerk of the court in which such judgment is entered shall notify in writing the State Registrar of Vital Statistics of the name of the person against whom such judgment has been entered, together with such other facts disclosed by the record as may assist in identifying the record of the birth of the child as the same may appear in the office of the said Registrar. If such judgment shall thereafter be modified or vacated, that fact shall be reported by the clerk to the State Registrar in the same manner.

Upon receipt of said notification the State Registrar shall record the information upon the birth certificate of the illegitimate child: Provided, however, that unless the judgment, order, or decree discloses that the child has been legitimated under the provisions of G. S. 49-10 or 49-12, the surname of said illegitimate child shall remain the same as the surname of its mother. (1941, c. 297, s. 1; 1955, c. 951, s. 19; 1957, c. 1357, s. 1.)

§ 130-69. Duties of local registrar as to birth and death certificates; reports.—Each local registrar shall supply blank forms of certificates to such persons as require them. Each local registrar shall carefully examine each certificate of birth or death when presented for record in order to ascertain whether or not it has been made out in accordance with the provisions of this article and the instructions of the State Registrar; and if any certificate of death, or fetal death, is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return, and he may withhold the burial-transit permit until such defects are corrected. All certificates, either of birth or of death, shall be typed or written legibly, in permanent black or blue-black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission. If the certificate of death is properly executed and complete, the local registrar shall then issue a burial-transit permit to the funeral director: Provided, that in case the death occurred from some disease which is held by the State Board of Health to be infectious, contagious, or communicable and dangerous to the public health, no burial-transit permit for the removal or other disposition of the body shall be issued by the registrar, except under such conditions as may be prescribed by the State Board of Health. If a certificate of birth is incomplete the local registrar shall immediately notify the informant, or attendant, and require him to supply the missing items of information if they can be obtained. He may number consecutively the certificates of birth and death, in two separate series, beginning with number one for the first birth and the first death in each calendar year, and sign his name as registrar in attest of the date of filing in his office. He shall also make one or more complete and accurate copies of each birth and each death certificate registered by him. Such copies may be made

on blanks supplied by the State Registrar ; or, in lieu thereof, subject to the approval of the register of deeds, he may cause photocopies to be made in such manner and form, and on paper of such standard grade and quality as the State Registrar may approve. The State Registrar shall not be responsible for any expenses incurred in preparing such photocopies. The local registrar shall within seven (7) days of the date of his receipt of a certificate of birth or death transmit to the register of deeds of the county or his agent a copy of each certificate registered by him, and he may also retain one copy of the certificate for his own files. On the fifth day of each month he shall transmit to the State Registrar all original certificates registered by him for the preceding month. If no births or no deaths occurred in any month, the local registrar shall, on the fifth day of the following month, report that fact to the State Registrar and the register of deeds of the county, on cards provided for such purpose. (1913, c. 109, s. 18; 1915, c. 85, s. 2; c. 164, s. 2; C. S., s. 7109; Ex. Sess. 1920, c. 58, s. 1; 1931, c. 79; 1933, c. 9, s. 1; 1943, c. 673; 1955, c. 951, s. 20; 1957, c. 1357, s. 1; 1963, c. 492, ss. 4, 8.)

Editor's Note.—The 1963 amendment rewrote the next-to-last sentence. It also substituted "one or more" for "two" near the beginning of the seventh sentence and substituted "funeral director" for "undertaker" in the fourth sentence.

§ 130-69.1. State Registrar to forward copies of certificates.—Upon receipt of the original certificates of birth, death, and fetal death from the local registrars of vital statistics, the State Registrar shall prepare a copy of each certificate except in the case of a child born out of wedlock that was filed in a county other than the county of residence. Such copies shall be forwarded within ninety days, through the local health department, to the register of deeds of the county of residence. (1949, c. 133; 1955, c. 951, s. 21; 1957, c. 1357, s. 1.)

§ 130-70. Register of deeds to preserve copies of birth and death records.—The register of deeds of each county shall file and preserve the copies of birth and death certificates furnished to him by the local registrar under the provisions of G. S. 130-69, and shall make and keep a proper index of such certificates. These records shall be open to public inspection. The register of deeds may make duplicates, copies or abstracts of such records, for which he shall be entitled to a fee of fifty cents (50¢) per copy. (1957, c. 1357, s. 1.)

Local Modification.—Orange: 1961, c. 771.

§ 130-71. Delivery of data to local health director.—Each local registrar, other than a local health director who is serving as local registrar, shall, on or before the fifth day of each month, deliver by mail or in person to the local health director of his respective jurisdiction such data from birth, death, and fetal death certificates filed with such local registrar during the preceding calendar month as may be needed in the proper execution of the duties of the said local health director, and as authorized by the State Registrar of Vital Statistics.

All forms necessary for the use of local registrars in complying with this section shall be supplied, without charge, by the State Registrar of Vital Statistics. (1925, c. 53; 1955, c. 951, s. 22; 1957, c. 1357, s. 1.)

§ 130-72. Pay of local registrars.—Each local registrar shall be paid the sum of fifty cents (50¢) for each birth, death, and fetal death certificate properly and completely made out and registered with him, correctly recorded and promptly returned by him to the State Registrar, as required by this article. In case no births, deaths, or fetal deaths were registered during any month, the local registrar shall be entitled to be paid the sum of fifty cents (50¢) for each report to that effect, but only if such report be made promptly as required by this article. The compensation of local registrars for services required of them by this article shall be paid by the county treasurers. The State Registrar shall certify every six months to the treasurers of the several counties the number of births and deaths properly regis-

tered, with the names of the local registrars and the amounts due each at the rates fixed herein. (1913, c. 109, s. 19; Ex. Sess. 1913, c. 15, s. 1; 1915, c. 85, s. 3; 1919, c. 210, s. 1; C. S., s. 7110; Ex. Sess. 1920, c. 58, s. 2; 1949, c. 306; 1957, c. 1357, s. 1.)

Local Modification.—Bladen: 1949, c. 480; Mitchell: 1951, c. 935, s. 1; Lenoir: 1961, c. 665.

§ 130-73. Certified or photocopies of records; fee.—The State Registrar shall, upon request, supply to any authorized applicant a certified copy of the record of any birth or death registered under provisions of this article, for the making and certification of which he shall be entitled to a fee of one dollar (\$1.00), to be paid by the applicant. Such certified copy of the birth record shall be issued in the form of a birth registration card which shall include only the full name, birth date, city and county of birth, race, sex, date of filing, and birth certificate number: Provided, that a full and complete copy of the birth certificate shall be supplied upon request to the registrant, if of legal age; or to the parent or parents, or to public welfare or public health agencies; or to duly licensed private welfare agencies upon the approval of the State Registrar; or to any other person upon the order of a judge of the superior court. Such birth registration card, properly certified by the State Registrar or his duly authorized agent, shall be prima facie evidence of the facts stated therein. Any federal agency or bureau approved by the State Registrar may, however, obtain, without expense to the State, transcripts or certified copies of births and deaths without payment of fees herein prescribed, and for transcripts so furnished the State Registrar may receive from such agency or bureau such compensation for this service as the State Board of Health may approve. Any copy of the record of a birth or death, properly certified by the State Registrar, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files and records when no certified copy is made, the State Registrar shall be entitled to a fee of one dollar (\$1.00) for each hour or fractional part of an hour of time of search, said fee to be paid by the applicant. The State Registrar shall keep a true and correct account of all fees by him received under these provisions, and turn the same over to the Treasurer of the State of North Carolina for use by the State Board of Health for health purposes. Provided, that upon the receipt of a certificate of birth as provided in G. S. 130-69, unless said child was born out of wedlock, the State Registrar shall within three months forward a photocopy thereof for the child to the address of the mother, if living; and if not, to the father or person standing in loco parentis to said child. No fee shall be collected for supplying this certificate.

When issuing a certified copy of the record of any birth or death registered under the provisions of this article, the State Registrar may, upon request, supply to any applicant a photocopy of such record with a photocopy of the certificate of the State Registrar signed by a facsimile of his signature; and such photocopy of the record of a birth or death shall be prima facie evidence in all courts and places of the facts therein stated. The State Registrar shall have the power and authority to appoint employees or agents, and upon such appointment by the State Registrar, said employees or agents shall have the power and authority to issue a certified copy of the record of any birth or death registered under the provisions of this article and to sign the name of or affix a facsimile of the signature of the State Registrar to the certification of said copy; and any copy of a record of a birth or a death, with the certification of same, so signed or with the facsimile of the State Registrar affixed thereto shall be prima facie evidence in all courts and places of the facts therein stated. The provisions of this section shall not apply to copies of birth certificates of adopted children. (1913, c. 109, s. 20; Ex. Sess. 1913, c. 15, s. 2; 1919, c. 145, s. 25; C. S., s. 7111; 1941, c. 297, s. 4; 1947, c. 473; 1949, c. 160, s. 1; 1951, c. 1091, s. 3; 1955, c. 951, s. 23; 1957, c. 1357, s. 1.)

Death Certificate as Evidence of Cause of Death.—The exclusion of the death certificate of insured, offered for the purpose of showing the cause of death, was not

reversible error, it not appearing whether the cause of death was stated therein as a fact or as an opinion, the certified copy of such record being prima facie evidence of the facts stated therein but not conclusions or opinions expressed therein, and it further appearing that the cause of death was not perforce material. *Rees v. Jefferson Standard Life Ins. Co.*, 216 N. C. 428, 5 S. E. (2d) 154 (1939).

Error in Admission Cured by Verdict.—In an action for wrongful death plaintiff objected to admission in evidence of his

testator's death certificate, which had not been certified in accordance with this section, plaintiff contending that admission of the certificate was prejudicial on the ground that the contents supported an inference that testator's death did not result from the accident in suit. The verdict of the jury in plaintiff's favor on the issue of negligence rendered the error, if any, in the admission of the certificate harmless. *McClamroch v. Colonial Ice Co.*, 217 N. C. 106, 6 S. E. (2d) 850 (1940).

§ 130-74. Information furnished to officers of American Legion or other veterans' organization.—Upon application to the Office of Vital Statistics made by the Adjutant or any officer of a local post of the American Legion, or by any officer of any other veterans' organization chartered by Congress or organized and operating on a Statewide or nationwide basis, it shall be the duty of the Office of Vital Statistics to furnish immediately to such applicant the vital statistical records and necessary copies thereof, made up in the necessary forms for the use of such applicant, without charge. This section shall apply only to records of persons who are members or former members of the armed forces of the United States and members of their families and/or beneficiaries under government insurance or adjusted compensation certificate issued to such member or former member of armed forces of the United States: Provided, that the State Registrar shall furnish to any American Legion Post in this State, upon application therefor in connection with junior baseball, certified copies of birth certificates, without the payment of the fees prescribed in this article. (1931, c. 318; 1939, c. 353; 1945, c. 996; 1955, c. 951, s. 24; 1957, c. 1357, s. 1.)

§ 130-75. Registers of deeds to issue birth certificates without cost to persons entering military forces.—The several registers of deeds of the State of North Carolina are authorized and directed to issue, free of cost, birth certificates to persons about to enter the United States military forces. (1951, c. 1113; 1957, c. 1357, s. 1.)

§ 130-76. Violations of article; penalty.—(a) Grounds for Suspension or Revocation of Embalmer's or Funeral Director's License.—A violation of any of the provisions of this article by any licensed embalmer or licensed funeral director shall constitute grounds for suspension or revocation of such license or licenses by the State Board of Embalmers and Funeral Directors.

(b) Misdemeanors.—Any person, who for himself or as an officer, agent, or employee of any other person, or of any corporation or partnership, shall do or omit any of the following acts:

- (1) Shall remove the dead body of a human being, or permit the same to be done, from the primary registration district in which the death occurred or the body was found without such authorization as is provided in this article;
- (2) Refuse or fail to furnish correctly any information in his possession, or shall furnish false information affecting any certificate of record, required by this article;
- (3) Wilfully alter otherwise than as provided by G. S. 130-64 or falsify any certificate, or record required by this article; or wilfully alter, falsify, or change any photocopy, certified copy, extract copy, or any document containing information obtained from an original, or copy, of any certificate or record required by this article, or wilfully make, create or use any altered, falsified, or changed record, reproduction, copy or document, for the purpose of attempting to prove or establish for any purpose whatsoever any matter purported to be shown thereon;

- (4) Fail, neglect, or refuse to perform any act or duty as required by this article or by the instructions of the State Registrar prepared under authority of this article;
 - (5) Inter, cremate, remove from the State, or otherwise finally dispose of the dead body of a human being, or permit the same to be done without authority of a burial-transit permit issued by the local registrar of the district in which the death occurred or in which the body was found;
- shall, upon conviction thereof, be guilty of a general misdemeanor and punished in the discretion of the court. (1913, c. 109, s. 21; 1919, c. 210, s. 2; C. S., s. 7112; 1955, c. 673; c. 951, s. 25; 1957, c. 1357, s. 1; 1963, c. 492, s. 7.)

Editor's Note.—The 1963 amendment re-wrote subsection (a), which formerly made certain violations felonies, and subdivision (1) of subsection (b). It also added subdivision (5) of subsection (b).

§ 130-77. Duties of registrars and others in enforcing this article.—Each local registrar is hereby charged with the strict and thorough enforcement of the provisions of this article in his registration district, under the supervision and direction of the State Registrar. He shall make an immediate report to the State Registrar of any violation of this article coming to his knowledge, by observation or upon complaint of any person or otherwise.

The State Registrar is hereby charged with the thorough and efficient execution of the provisions of this article in every part of the State, and is hereby granted supervisory power over local registrars, deputy local registrars, and subregistrars. He shall see that all of the requirements of this article are uniformly complied with. The State Registrar, either personally or through an accredited representative, shall have authority to investigate cases of irregularity or violation of this article, and all registrars shall aid him, upon request, in such investigations. When he deems it necessary, he shall report violations of the provisions of this article to the prosecuting attorney of the county, or to the solicitor of the district, with a statement of the facts and circumstances; and when any such violation is reported to him by the State Registrar, the prosecuting attorney or solicitor of the district, as the case may be, shall forthwith initiate and promptly follow up the necessary court proceedings against the person or corporation responsible for the alleged violation of law. Upon request of the State Registrar, the Attorney General shall also assist in the enforcement of the provisions of this article. (1913, c. 109, s. 22; C. S., s. 7113; 1957, c. 1357, s. 1.)

§ 130-78. Local systems abrogated.—No systems for the registration of births and deaths shall be continued or maintained in any of the several municipalities of this State other than the one provided for and established by this article. (1913, c. 109, s. 24; C. S., s. 7115; 1957, c. 1357, s. 1.)

§ 130-79. Establishing fact of birth by person without certificate.—(a) Any person born in the State of North Carolina not having a duly recorded certificate of his or her birth, may file a duly verified petition with the clerk of the superior court in the county of his legal residence or place of birth, setting forth the date, place, and parentage of his birth, and petitioning the said clerk to hear evidence, and find, and adjudge the date, place and parentage of the birth of said petitioner. Upon the filing of such a petition, the clerk shall set a date for hearing evidence upon the same, and shall conduct said proceeding in the same manner as other special proceedings. At the time set for said hearing the petitioner shall present such evidence as may be required by the court to establish the fact of his birth to the satisfaction of said court. At said hearing, if the evidence offered shall satisfy said court of the date, place, and parentage of said petitioner's birth, the court shall thereupon find the facts and enter a judgment duly establishing the date and place of birth and parentage of said petitioner, and record the same in the record of special proceedings in his office. The clerk shall certify the same to the State Office of Vital Statistics and the same shall thereupon be recorded in the State Office

of Vital Statistics upon forms which it may adopt and a copy thereof certified to the register of deeds of the county in which said petitioner was born. The clerk may charge a fee not to exceed two dollars (\$2.00) for his services under this section.

(b) The record of birth established by a person under this section, when recorded, shall become a public record and shall be accepted as such by the courts and other agencies of this State in the same manner as other public records.

(c) The provisions provided hereunder shall be cumulative, and not in disparagement of any other acts or provisions for obtaining a delayed birth certificate. (1941, c. 122; 1957, c. 1357, s. 1.)

§ 130-79.1. Establishing facts relating to birth of abandoned children.—(a) In the event a person who was abandoned, deserted, or forsaken as a child by his or her parent(s) in North Carolina and the name and address of the abandoning parent(s) are unknown, and the place and date of birth are unknown, such person may file a duly verified petition with the clerk of the superior court in the county where he was abandoned, deserted or forsaken, setting forth the facts and petitioning the clerk to hear evidence and find the facts concerning the abandonment, the name or assumed name, date and place of birth of the person, and the names of the person or persons acting in loco parentis to the individual.

(b) The clerk shall find such facts as the evidence may warrant and, if there is insufficient evidence to establish the place of birth, it shall be conclusively presumed that such person was born in the county where he was abandoned. The clerk shall enter a judgment as to his findings and record the same in the record of special proceedings in his office. The clerk shall certify the same to the State Office of Vital Statistics and the same shall thereupon be recorded in the State Office of Vital Statistics upon forms which it may adopt and a copy thereof certified to the register of deeds of the county in which said petitioner was abandoned. The clerk may charge a fee not to exceed two dollars (\$2.00) for his services under this section.

(c) The record of birth established by a person under this section, when recorded, shall become a public record and shall be accepted as such by the courts and other agencies of this State in the same manner as other public records.

(d) The provisions provided hereunder shall be cumulative, and not in disparagement of any other acts or provisions for obtaining a delayed birth certificate. (1959, c. 492.)

ARTICLE 8.

Infectious Diseases Generally.

§ 130-80. Health director has quarantine authority.—The local health director is authorized to exercise quarantine authority within his jurisdiction. (1957, c. 1357, s. 1.)

§ 130-81. Physicians to report certain diseases.—Every physician who has reasonable cause to believe that a person about whom he has been consulted professionally is afflicted with a disease declared by the State Board of Health to be reportable, shall within twenty-four hours report the name and address of such person to the local health director of the county or district in which such person is living or residing at the time of consultation. If the afflicted person is a minor, the physician consulted professionally about him shall notify the local health director of the name and address of the parent or guardian of the minor in addition to the name and address of the minor himself. (1893, c. 214, s. 11; Rev., s. 3448; 1917, c. 263, s. 7; C. S., s. 7151; 1921, c. 223, s. 1; 1957, c. 1357, s. 1.)

§ 130-82. Parents and householders to report.—It shall be the duty of every parent, guardian, or householder or person standing in loco parentis, in the order named, to notify the local health director of the name and address of any person in their family or household about whom no physician has been consulted but whom

they have reason to suspect of being afflicted with a disease declared by the North Carolina State Board of Health to be reportable. (1917, c. 263, s. 8; C. S., s. 7152; 1921, c. 223, s. 2; 1957, c. 1357, s. 1.)

§ 130-83. Local health directors to report cases to State Board of Health.—It shall be the duty of the local health director to report all cases of diseases reported to him pursuant to G. S. 130-81 or 130-82, within twenty-four hours of the receipt of such report, to the State Health Director, and to make this report on forms supplied him by the State Health Director and in accordance with the rules and regulations adopted by the State Board of Health. (1917, c. 263, s. 9; C. S., s. 7153; 1921, c. 223, s. 3; 1957, c. 1357, s. 1.)

§ 130-84. Duty of disinfection.—Any householder in whose family or home there is a person sick with any disease declared by the regulations of the State Board of Health to be transmissible by water shall comply with instructions given to him by an attending physician or, if there be no attending physician, by the local health director, as to proper disinfection, and it shall be the duty of such attending physician or local health director to give such instructions. (1893, c. 214, s. 16; Rev., s. 4459; 1909, c. 793, s. 8; C. S., s. 7158; 1957, c. 1357, s. 1.)

§ 130-85. Examination and detention of infected travelers.—Any local health department may examine travelers from epidemic areas in other states when such travelers are suspected of bringing any infection dangerous to the public health into the State of North Carolina. The local health department may restrain such persons from traveling until they are permitted to do so by the local health director or by the proper municipal health authorities of the city or town to which they may come. A traveler coming from such epidemic area who, without such permission, travels within this State, except to return by the most direct route to the state from whence he came, after he has been cautioned to depart shall be isolated or ejected, at the discretion of the local health director or the municipal health authorities. All common carriers bringing into this State any such person as that named above are hereby required to return him to some point without this State, if directed to do so by the local health director or municipal health authorities. Nothing in this section shall prevent the State Board of Health from appointing such examiners as it may deem necessary for the preservation and promotion of the public health. (1893, c. 214, s. 15; 1901, c. 245, s. 6; Rev., ss. 3454, 4506; C. S., s. 7159; 1957, c. 1357, s. 1.)

§ 130-86. Transportation of bodies of persons dying of reportable diseases.—No person shall convey or cause to be conveyed through or from any county, city, or town in this State the remains of any person who has died of any disease declared by the State Board of Health to be reportable until such body has been encased in such manner as shall be directed by the State Board of Health. No local registrar of vital statistics or other person shall give a permit for the removal of such body until the regulations of the State Board of Health concerning the removal of dead bodies have been complied with. (1893, c. 214, s. 16; Rev., s. 4459; C. S., s. 7161; 1953, c. 675, s. 16; 1957, c. 1357, s. 1.)

ARTICLE 9.

Immunization.

§ 130-87. Immunization required.—All children in North Carolina are required to be immunized against diphtheria, tetanus, and whooping cough before reaching the age of one year, and are required to be immunized against smallpox before attending any public, private, or parochial school. (1957, c. 1357, s. 1.)

§ 130-88. Administering immunizing preparations.—A parent, guardian, or person in loco parentis, of any child of any age, pursuant to the provisions of G. S. 130-87, shall present the child to a physician and request the physician to administer

to such child preparations sufficient to immunize such child against the diseases specified in G. S. 130-87. If for any reason a child in North Carolina has passed the age or entered in attendance upon any school without having been immunized as required in G. S. 130-87, the parent, guardian or person in loco parentis of such child shall immediately upon the effective date of this chapter or upon the coming into this State of such child present the child to a physician and request the physician to administer to such child preparations sufficient to immunize such child against the diseases specified in G. S. 130-87. All such preparations used in carrying out the provisions of this section must meet the standards required by the State Board of Health. The State Board of Health is authorized to maintain and to distribute, under rules and regulations prepared by the State Board of Health, sufficient preparations to carry out the provisions of this article. The State Board of Health is authorized to make charges for such preparations to cover the cost of maintaining and distributing them. If the local board of health so directs, the county health director shall administer preparations sufficient to immunize against the diseases specified in G. S. 130-87 to the children not previously immunized at preschool clinics within the jurisdiction of said local board of health at the times specified by the local board of health. (1957, c. 1357, s. 1.)

§ 130-89. Expenses of immunization.—If the person required to present a child for immunization as provided in G. S. 130-88 is unable to pay for the services of a private physician or for the immunizing preparation, the child may be taken to the local health director of the area in which the child resides, where such immunizing preparation shall be provided and administered free. The county appropriating body shall make available sufficient funds for purchase of such immunizing preparation for such cases. (1957, c. 1357, s. 1.)

§ 130-90. Certificate of immunization.—The physician administering the preparation shall submit a certificate of immunization, on forms furnished by the State Board of Health, to the local health director and give a copy to the parent, guardian, or person in loco parentis, of the child. (1957, c. 1357, s. 1.)

§ 130-91. School admittance.—No principal shall permit any child to enter a public, private, or parochial school without the certificate provided for in G. S. 130-90, or some other acceptable evidence of immunization against smallpox, diphtheria, tetanus and whooping cough. (1957, c. 1357, s. 1.)

§ 130-92. Exemptions from immunization.—(a) If any physician certifies that a preparation required to be administered under the provisions of this article is detrimental to the child's health, the requirements of this article with respect to such preparation shall be inapplicable until such preparation is found no longer to be detrimental.

(b) The provisions of this article shall not apply to children whose parent or parents or guardian are bona fide members of a recognized religious organization whose teachings are contrary to the practices herein required, and no certificate for admission to any public, private, or parochial school shall be required as to them. (1957, c. 1357, s. 1.)

§ 130-93. Rules and regulations.—In addition to the provisions contained in this article, a local board of health may make such reasonable rules and regulations for the immunization of persons within its jurisdiction as may be necessary to protect the public health. (1957, c. 1357, s. 1.)

ARTICLE 9A.

Poliomyelitis (Infantile Paralysis).

§ 130-93.1. Vaccination of young children against poliomyelitis (infantile paralysis).—(a) The parent, parents, guardian or any person in loco parentis of any child in North Carolina between the ages of two months and six years shall

have administered to such child an adequately immunizing dose as determined by the North Carolina State Board of Health of a prophylactic agent against poliomyelitis (infantile paralysis) which meets the standard approved by the United States Public Health Service for such biological products, and which is approved by the North Carolina State Board of Health.

(b) The parent, parents, guardian or person in loco parentis of such child who has not previously received such vaccination or immunization shall present the child to a physician licensed to practice medicine in North Carolina and request such physician to administer the necessary vaccination or immunization against poliomyelitis (infantile paralysis) as above provided.

(c) If the said parent, parents, guardian or person in loco parentis of such child are unable to pay for the services of a private physician, or for such prophylactic poliomyelitis agent, such parent, parents, guardian or person in loco parentis shall present such child to the county physician of the county in which the child resides, or to the physician health director serving such county, who shall then administer or authorize a competent agent to administer such prophylactic agent without charge. As authorized by and with the approval of the Governor and the Council of State, the vaccine necessary for immunizations under this subsection shall be purchased and furnished to the local health directors by the State Board of Health and the cost of such vaccine shall be paid for from the Contingency and Emergency Fund for the fiscal year in which such expense is incurred.

(d) The physician who administers such prophylactic agent against poliomyelitis (infantile paralysis) to such children shall submit a certificate of such vaccination or immunization to the local health director and shall give a copy of the same to the parent, guardian or person in loco parentis of the child.

(e) No principal or teacher shall permit any child to attend a public, private or parochial school without the certificate provided for in subsection (d) above, or some other acceptable evidence of the child's vaccination or immunization against poliomyelitis (infantile paralysis).

(f) If any physician licensed to practice medicine in North Carolina certifies that such vaccination or immunization may be detrimental to a child's health, the requirements of this article shall be inapplicable until such vaccination or immunization is found no longer to be detrimental to the child's health.

(g) Any person violating this article or any part thereof shall be guilty of a misdemeanor and shall be punished by a fine of not more than fifty dollars (\$50.00) or by imprisonment for not more than thirty (30) days in the discretion of the court.

(h) This article shall not apply to children whose parent, parents, or guardian are bona fide members of a recognized religious organization whose teachings are contrary to the practices herein required, and no certificate for admission to any private, public or parochial school shall be required as to them. (1959, c. 177.)

ARTICLE 10.

Venereal Disease.

Part 1. Venereal Disease.

§ 130-94. **Venereal diseases; applicants for marriage license.**—Syphilis, gonorrhea, chancroid, granuloma inguinale, lymphogranuloma venereum are hereby declared to be contagious, infectious, communicable, and dangerous to the public health. It shall be unlawful for any person infected with any of the venereal diseases hereinabove enumerated to expose another person to infection. All applicants for a marriage license must obtain a health certificate in accordance with the provisions of chapter 51 of the General Statutes of North Carolina. (1919, c. 206, s. 1; C. S., s. 7191; 1957, c. 1357, s. 1.)

§ 130-95. **Physicians and others to report cases or positive laboratory tests.**—Any physician or other person responsible for diagnosis or treatment of a patient

with venereal disease, or any superintendent or manager of a hospital, dispensary, or charitable institution in which there is a patient or inmate with a venereal disease, or laboratory performing a positive laboratory test for venereal disease, shall make a report of such case or positive laboratory test for venereal disease to the local health director in such form and manner as the State Board of Health shall direct, and shall cooperate with the State Board of Health and local boards of health in preventing the spread of venereal diseases. (1919, c. 206, s. 2; C. S., s. 7192; 1957, c. 1357, s. 1; 1961, c. 753.)

Editor's Note.—The 1961 amendment re-wrote this section.

§ 130-96. Examination and investigation of venereal disease.—State and local health directors, or authorized agents under their supervision, within their respective jurisdictions are hereby empowered and directed, when it is necessary to protect the public health, to make examinations of persons reasonably suspected of being infected with venereal disease, and to detain such persons until the results of such examinations are known, and to isolate or quarantine persons infected with a venereal disease when it is necessary to protect the public health. Persons infected with a venereal disease shall report for treatment to a licensed physician and continue treatment until the disease is no longer communicable, or shall submit to treatment provided at public expense until the disease is no longer communicable. It shall be the duty of the State Health Director and all local health directors to interview or cause to be interviewed all persons infected or reasonably suspected of being infected with a venereal disease, and to investigate or cause to be investigated the sources of infection and the spread of venereal diseases, and to cooperate with the proper officials whose duty it is to enforce laws directed against prostitution. No examination of any person for venereal disease under this section shall be made by anyone except a licensed physician or authorized agent under his immediate supervision. (1919, c. 206, s. 3; C. S., s. 7193; 1925, c. 217, s. 1; 1957, c. 1357, s. 1.)

§ 130-97. Prisoners examined and treated.—All persons confined or imprisoned in any State, county, or city prison or jail shall, within 48 hours after commitment, be examined for venereal diseases by the county physician or other authorized physician. If such person is infected with a venereal disease, he shall be treated by said county physician or other authorized physician as soon as practicable. The prison authorities of any State, county, or city prison or jail are directed to make available to examining physicians such portion of any State, county, or city prison as may be necessary for clinic or a hospital wherein all persons who are confined or imprisoned in the prison and who are infected with venereal disease may be treated for such disease. All persons who are suffering with venereal disease at the time of the expiration of their terms of imprisonment, and in case no other suitable place for isolation or quarantine is available, such other persons as may be isolated or quarantined under the provisions of G. S. 130-96 shall be isolated at such clinic or hospital and treated at public expense until the disease is no longer communicable. In lieu of such isolation, the State Board of Health may require any such person to report for treatment to a licensed physician or to submit to treatment provided at public expense under the provisions of this article. Nothing herein contained shall be construed to interfere with the service of any sentence imposed by a court as a punishment for the commission of crime. No examination of any person for venereal disease under this section shall be made by anyone except a licensed physician or authorized agent under his immediate supervision. (1919, c. 206, s. 4; C. S., s. 7194; 1925, c. 217, s. 2; 1957, c. 1357, s. 1.)

§ 130-98. Prisoners not released until treatment begun.—Whenever any person is confined or imprisoned in any State, county, or city prison or jail and, upon examination as provided by this article, he is found to be infected with a communicable venereal disease, such person shall not be set at liberty until treated for said disease in accordance with the provisions of this article, unless he has begun a

course of treatment for venereal disease under the direction of an authorized physician and gives a bond with satisfactory surety to the clerk of the superior court of the county where he is imprisoned or confined, conditioned upon his making his personal appearance at a stated time and place before the county physician or other examining physician authorized by this article, and submitting to such examination as may be proper in the case, and satisfying said physician that he is undergoing, or has undergone, satisfactory treatment for his said disease. Upon the giving of the said bond, such person shall, from time to time, as required by the county physician or other physician authorized to give said examination, personally appear before him for examination, and when, in the judgment of the said physician the disease is no longer communicable, he shall be permitted to go without further appearance, and his bond shall be discharged.

The order discharging the said persons from further attendance and examination shall be made by the clerk of the superior court, upon certificate of the aforesaid physician authorized to make the examination. (1937, c. 230; 1957, c. 1357, s. 1.)

§ 130-99. Board of Health to make rules and regulations.—The State Board of Health is hereby empowered to make such rules and regulations as are necessary for the purpose of carrying out the provisions of this article, and for the purpose of controlling, treating, preventing and eradicating venereal disease. (1919, c. 206, s. 5; C. S., s. 7195; 1957, c. 1357, s. 1.)

§ 130-100: Omitted.

§ 130-101. Treatment except by physician or pursuant to prescription illegal.—It shall be unlawful for any person except a licensed physician to prescribe, and it shall be unlawful for any person except pursuant to the prescription of a licensed physician to sell or give away any medicine for the treatment of any person afflicted with venereal disease, and it shall be unlawful for any person who obtains a prescription from a physician for treatment of venereal disease or obtains drugs or remedies for the treatment of venereal disease to give a false or assumed name or address. (1919, c. 214, s. 1; C. S., s. 7199; 1957, c. 1357, s. 1.)

§ 130-102. Purchaser of remedies may be examined.—The State Board of Health or local health departments or their agents may require any purchaser of drugs or remedies which may be used in the treatment of venereal disease, when such person may be reasonably supposed to be infected with a venereal disease, to appear before a licensed physician for an examination for such disease. (1919, c. 214, s. 7; C. S., s. 7205; 1957, c. 1357, s. 1.)

§ 130-103. Pregnant women to have test for syphilis.—Every woman who becomes pregnant shall have a blood sample taken, and submitted to a laboratory approved by the State Board of Health for performing serological or other approved tests for syphilis. Every person attendant upon a pregnant woman shall be responsible for having said blood samples taken and submitted, and if the attendant is not permitted by law to take the blood samples, then said attendant shall refer the pregnant woman to a duly licensed physician or health director who, in turn, shall take or cause to be taken such blood samples and submit the same to an approved laboratory as required by this article. (1939, c. 313, s. 1; 1957, c. 1357, s. 1.)

Editor's Note.—For comment on this enactment, see 17 N. C. Law Rev. 359.

§ 130-104: Omitted.

§ 130-105. Birth certificates to contain information as to tests.—All persons required to report births and fetal deaths shall state on the birth or fetal death certificate whether the woman who bore the child was given a blood test for syphilis during pregnancy or at delivery. (1939, c. 313, s. 4; 1957, c. 1357, s. 1.)

Part 2. Inflammation of the Eyes of the Newborn.

§ 130-106. **Ophthalmia neonatorum described.**—Any inflammation, swelling, or unusual redness in either one or both eyes of any infant, either apart from or together with any unnatural discharge from the eye or eyes of such infant independent of the nature of the infection, if any, occurring any time within two weeks after the birth of such infant, shall be known as "inflammation of the eyes of the newborn" (*ophthalmia neonatorum*). (1917, c. 257, s. 1; C. S., s. 7180; 1957, c. 1357, s. 1.)

§ 130-107. **Inflammation of eyes of newborn to be reported.**—It shall be the duty of any person attending or assisting in any way whatsoever any newborn infant or the mother of any newborn infant, at childbirth or at any time within two weeks after childbirth, to report immediately to the local health director of the area in which the infant is born any inflammation of the eyes of the newborn infant. If there is no health director in the area in which the infant is born, the person attending or assisting at childbirth must immediately report the condition to a licensed physician. On receipt of such report, the health director, or the physician notified because of the nonexistence of a health director, shall immediately give to the parents or person having charge of such infant a warning of the dangers to the eye or eyes of said infant, and shall for indigent cases provide the necessary treatment at the expense of the county, city, village or town. (1917, c. 257, s. 2; C. S., s. 7181; 1957, c. 1357, s. 1.)

§ 130-108. **Eyes of newborn to be treated; records.**—Any person in attendance upon a case of childbirth shall instill or have instilled immediately upon its birth, in the eyes of the newborn babe, a solution or medication prescribed and approved by the State Board of Health for the purpose of preventing infection of the eyes of the newborn. It shall be the duty of every person in attendance, or the duty of the institution in which the birth takes place, to prepare such records concerning inflammation of the eyes of the newborn as the State Board of Health shall direct. (1917, c. 257, s. 3; C. S., s. 7182; 1957, c. 1357, s. 1.)

Duty of Physician.—This section does not impose upon the physician attempting in good faith to obey the statute the absolute duty of ascertaining the percentage of the solution furnished by a hospital for this

purpose, and he is not liable for damages resulting from the use of a larger per cent of such solution when so furnished by the hospital. *Covington v. Wyatt*, 196 N. C. 367, 145 S. E. 673 (1928).

§ 130-109. **Duties of local health director.**—It shall be the duty of the local health director:

- (1) To investigate or cause to be investigated each case filed with him in pursuance of this article, and all contacts necessary to trace the source of the infection in such case, and any other such cases as may come to his attention;
- (2) To report all cases of inflammation of the eyes of the newborn and the result of all such investigations, as the State Board of Health shall direct;
- (3) To conform to and carry out such other rules and regulations concerning inflammation of the eyes of the newborn as the State Board of Health shall promulgate for his further guidance. (1917, c. 257, s. 4; C. S., s. 7183; 1957, c. 1357, s. 1.)

§ 130-110. **Duties of State Board of Health.**—It shall be the duty of the State Board of Health to promulgate such rules and regulations as are necessary in the interest of the public health for the carrying out of this article, to provide for the gratuitous distribution of the medication for preventing infection of the eyes of the newborn required by this article to all physicians and midwives as may be engaged in the practice of obstetrics or assisting at childbirth, and to disseminate such information concerning inflammation of the eyes of the newborn as may be

necessary in the interest of the public health. (1917, c. 257, s. 5; C. S., s. 7184; 1957, c. 1357, s. 1.)

§ 130-111. Violation of article.—A violation of any of the provisions of this article concerning the giving of notice that a child has inflammation of the eyes or the treating of a child which has inflammation of the eyes shall be deemed *prima facie* evidence of negligence in any civil suit. (1917, c. 257, s. 7; C. S., s. 7186; 1957, c. 1357, s. 1.)

§ 130-112. Registration of midwives.—No person shall practice midwifery in North Carolina without a permit as required by article 18 of this chapter, and until registered with the local health director of the area in which such person intends to practice midwifery. The local health director shall notify the State Board of Health of such registration, and the State Board of Health shall furnish to such registered persons the necessary directions and medications for compliance with this article and the rules and regulations of the State Board of Health. (1917, c. 257, s. 8; C. S., s. 7187; 1957, c. 1357, s. 1.)

ARTICLE 11.

Tuberculosis.

Part 1. Prevention of Spread of Tuberculosis.

§ 130-113. Health directors to cause suspects to be examined.—When any local health director has reasonable grounds to believe that any person has tuberculosis in an active stage or in a communicable form, and such person will not voluntarily seek a medical examination, then it shall be the duty of such health director to order such person to undergo an examination by a physician qualified in chest diseases or at a State or county sanatorium for tuberculosis or at a clinic or hospital approved by the State Board of Health for such examinations. The health director and the person suspected of having tuberculosis shall, if possible, agree upon the time and place of examination, but if no satisfactory time and place can be arranged by agreement, then the health director shall fix a reasonable time and place for such examination, and it shall be the duty of such suspected person to present himself for examination at such time and place as is fixed by the health director. The examination shall include an X-ray of the chest, a sufficient number of laboratory examinations of sputum, and such other forms and types of examinations as shall be approved by the State Board of Health. If, upon such examination, it shall be determined that such person has tuberculosis in an active stage or in a communicable form, then it shall be the duty of such tuberculous person, as soon as he can reasonably do so, to arrange for admission of himself as a patient in one of the State sanatoriums for tuberculosis, or in a county sanatorium for tuberculosis or in a private hospital or in the ward of a private hospital maintained and operated for the treatment of tuberculous patients; provided, that when there is no danger to the public or to other individuals as determined by the health director, the tuberculous person may receive treatment at home. (1943, c. 357; 1945, c. 583; 1951, c. 448; 1957, c. 1357, s. 1.)

Editor's Note.—For comment on this section, see 21 N. C. Law Rev. 353.

§ 130-114. Precautions necessary pending admission to the hospital.—Whenever it has been determined that any person has tuberculosis in an active stage or in a communicable form, and such person is not immediately admitted as a patient in a State sanatorium for tuberculosis, county sanatorium for tuberculosis or in a private hospital or ward of a private hospital maintained for the treatment of tuberculosis, it shall be the duty of the local health director to instruct such person as to the precautions necessary to be taken to protect the members of such person's

household or the community from becoming infected by tuberculosis communicated by such person, and it shall be the duty of such tuberculous person to conduct himself and to live in such a manner as not to expose members of his family or household, or any other person with whom he may be associated to danger of infection, and said health director shall investigate from time to time to make certain that his instructions are being carried out in a reasonable and acceptable manner. It shall be unlawful for any person to:

- (1) Willfully fail and refuse to present himself to any private physician qualified in chest diseases, hospital, clinic, county sanatorium or State sanatorium for an examination for tuberculosis at such time and place as is fixed by the health director or at such time and place agreed upon between such suspected person and the health director,
- (2) Willfully fail and refuse to present himself for admission as a patient to any State sanatorium, county sanatorium, provided such facilities are available, or private hospital or ward of a private hospital maintained and operated for the treatment of tuberculous persons when such action is found by the health director to be necessary for the prevention of spread of the disease, in accordance with the provisions of G. S. 130-113,
- (3) Willfully fail or refuse to follow the instructions of the health director as to the precautions necessary to be taken to protect the members of his or her household or any member of the community or any other person with whom he or she may be associated from danger of infection by tuberculosis communicated by such person.

If any person shall be convicted of any of the violations set forth in subdivisions (2) and (3) of this section or shall enter a plea of guilty thereto when charged with such violations, such person shall be imprisoned in the prison division of the North Carolina Sanatorium; provided, the period of imprisonment shall be for two years. The associate superintendent-medical director of the North Carolina Sanatorium, located at McCain, North Carolina, upon signing and placing among the permanent records of the North Carolina Sanatorium a statement to the effect that a person imprisoned under this section may be discharged without danger to the health or life of others, or for any other reason stated in full which he may deem adequate and sufficient, may discharge the person so committed at any time during the period of commitment. He shall report each such discharge, together with a full statement of the reasons therefor, at once to the health director serving the territory from which the person came and to the board of trustees or other controlling authority of such sanatorium and to the prison division of the State Prison Department. The court in which a person is convicted of violating subdivision (2) or (3) of this section may suspend judgment, however, if such convicted person shall be hospitalized in a county sanatorium or State sanatorium and shall remain there until discharged by the associate superintendent-medical director or controlling authority of such county sanatorium or State sanatorium. The superintendent-medical director of the North Carolina sanatorium system with the advice and consent of the Commissioner of Paroles, where he finds that a person committed to the prison division of the State sanatorium has obeyed the rules and regulations of such division or department for a period of not less than sixty days may, in his discretion, have the authority to transfer any patient who, in his judgment, will conform to the rules of the sanatorium, from the prison division to any State sanatorium, or Veterans Administration tuberculosis hospital.

The county of legal residence of such committed person shall be responsible for the regularly established fee for indigent or welfare patients and shall be responsible for this fee during the patient's period of hospitalization in the prison division of the North Carolina Sanatorium located at McCain, North Carolina.

The provisions of this section apply to minors as well as adults; provided, however, that persons under 16 years of age, upon conviction of a violation of the provisions of this section, shall not be imprisoned in the prison division of the North

Carolina Sanatorium, but shall be placed in a State, county or private sanatorium for treatment. (1943, c. 357; 1951, c. 448; 1955, c. 89; 1957, c. 1357, s. 1.)

Sufficiency of Warrant.—Where a warrant cites the statute under which it is drawn as § 130-225.1 (now § 130-113), whereas the penal provisions of the statute for the prevention of spread of tuberculosis are contained in this section, but the warrant sets out the charge of a criminal offense under the law, the reference by its number to § 130-225.1 (now § 130-113) will be regarded as surplusage, and is at most an irregularity which would not render the warrant and judgment void and detention thereunder unlawful. In re Stoner, 236 N. C. 611, 73 S. E. (2d) 566 (1952).

Judgment in Prosecution for Violation of Section.—Where defendant has been found by a jury to be an active tubercular carrier in the infectious stage, and as such had willfully failed to take the precautions prescribed by the public health authorities, judgment that he be confined in the prison department of the North Carolina Sanatorium is in accord with this section, and further provision of the judgment that he be released to a veterans' hospital if he could secure admission thereto is in his interest. In re Stoner, 236 N. C. 611, 73 S. E. (2d) 566 (1952).

Part 2. Tuberculous Prisoners.

§ 130-115. Tuberculous county prisoners to be segregated.—The boards of county commissioners of the respective counties of North Carolina shall provide in the jail, camp or other place where county prisoners are committed for keeping, separate cells or rooms or other places in which any prisoner or prisoners who may be committed to said place of confinement and who has been examined by the county physician or local health director and pronounced to be infected with tuberculosis shall be confined. (1907, c. 567, s. 1; C. S., 7207; 1957, c. 1357, s. 1.)

§ 130-116. Law enforcement officers to have prisoners suspected to be tuberculous examined and separated.—When a prisoner is placed in the custody of a law enforcement officer for the purpose of being committed to jail or to any place where prisoners are kept, and the law enforcement officer has reason to believe or suspect that the prisoner is suffering with tuberculosis, it shall be the duty of the law enforcement officer to have such prisoner examined by the county physician or local health director and if upon examination the prisoner is pronounced tuberculous, then he shall be separated from other prisoners and confined in a separate cell or other place of confinement, and if the prisoner is under sentence of confinement, and is otherwise eligible for admission, he shall be transferred to the prison division of the North Carolina Sanatorium at McCain, North Carolina. (1907, c. 567, s. 2; C. S., s. 7208; 1957, c. 1357, s. 1.)

§ 130-117. Tuberculous State prisoners to be segregated.—It shall be the duty of the board of directors of the State's prison to provide separate cells or apartments for the confinement of prisoners sentenced to that institution for a term of imprisonment, who have been examined and pronounced by the physician in charge to be infected with tuberculosis, until said prisoners can be transferred to the prison division of the North Carolina Sanatorium at McCain, North Carolina. (1907, c. 567, s. 3; C. S., s. 7209; 1957, c. 1357, s. 1.)

§ 130-118. Separate cells for tuberculous prisoners.—Cells or places of confinement provided for prisoners infected with tuberculosis must be kept exclusively for such prisoners, and when they have been occupied by tuberculous prisoners they shall not be used for other prisoners until the county physician or the local health director or the physician in charge or the health authorities of the State's prison have been notified, and until such cells or places of confinement have been thoroughly disinfected under the supervision of such officials in the manner required by the State Board of Health. (1907, c. 567, s. 4; C. S., s. 7210; 1957, c. 1357, s. 1.)

§ 130-119. Prison authorities to have prisoners suspected to be tuberculous examined.—When a prisoner is committed to any prison or place of confinement designated in this article, and the law enforcement officers or prison officials know or suspect the prisoner to be suffering with tuberculosis, it shall be the duty of

such officers or officials immediately upon receipt of such knowledge or the arousal of such suspicion to cause the prisoner to be examined by the county physician or the local health director or the physician in charge. (1907, c. 567, s. 5; C. S., s. 7211; 1957, c. 1357, s. 1.)

§ 130-120. Tuberculous prisoners not to be worked.—No prisoner suffering with active tuberculosis shall be worked on any public or private works. (1917, c. 262, s. 1; C. S., s. 7213; 1943, c. 543; 1957, c. 1357, s. 1.)

§ 130-121. Examination of prisoners.—It shall be the duty of every county or city physician or local health director, or other physician responsible for the medical care of city, county, or State prisoners, within his respective jurisdiction, to make a thorough physical examination of every prisoner within forty-eight hours after admission of such prisoner. Such examining physician shall be required to make reports concerning the health of the prisoners and the transference of prisoners, upon such forms as the State Board of Health may require. (1917, c. 262, s. 4; C. S., s. 7216; 1957, c. 1357, s. 1.)

§ 130-122. Food and work of tuberculous prisoners.—In order more effectively to promote the recovery of tuberculous prisoners, it shall be the duty of the warden or superintendent of any unit of the State Prison System and such other officers as may have jurisdiction under him to provide such additional food for prisoners suffering with tuberculosis as may be prescribed or requested by the physician in charge. Prisoners suffering with tuberculosis shall be transferred promptly to the prison division of the North Carolina Sanatorium at McCain. When a prisoner has been discharged as an arrested case of tuberculosis from the prison division of the sanatorium and returned to the Central Prison or State farm, he shall only do such work as may be prescribed by the prison physician. (1917, c. 262, s. 7; C. S., s. 7219; 1957, c. 1357, s. 1.)

ARTICLE 12.

Sanitary Districts.

§ 130-123. Creation by State Board of Health.—For the purpose of preserving and promoting the public health and welfare the State Board of Health may, as hereinafter provided, create sanitary districts without regard for county, township or municipal lines: Provided, however, that no municipal corporation or any part of the territory in a municipal corporation shall be included in a sanitary district except at the request of the governing board of such municipal corporation; provided further that if such municipal corporation shall not have levied any tax nor performed any official act nor held any elections within a period of four years next preceding the date of the petition for said sanitary district, as hereinafter provided, such a request of the governing board shall not be required. (1927, c. 100, s. 1; 1955, c. 1307; 1957, c. 1357, s. 1.)

Local Modification.—Caswell: 1939, c. 3, ss. 1, 2; 1941, c. 89; 1943, c. 287; Moore: 1939, c. 3, s. 3.

Article Valid.—This article constitutes a general law of State-wide application relating to health, and is valid. *Drysdale v. Prudden*, 195 N. C. 722, 143 S. E. 530 (1928).

When Sanitary District May Occupy Same Territory as City.—A sanitary district may with, but only with, the consent of a municipality, occupy the same territory as the city. *State v. Lenoir*, 249 N. C. 96, 105 S. E. (2d) 411 (1958).

§ 130-124. Procedure for incorporating district.—A sanitary district shall be incorporated as hereinafter set out. Fifty-one per cent (51%) or more of the resident freeholders within a proposed sanitary district may petition the board of county commissioners of the county in which all or the majority portion of the petitioning freeholders of the proposed district are located, setting forth the boundaries of the proposed sanitary district and the objects it is proposed to accomplish. Upon receipt of such petition the board of county commissioners, through its chair-

man, shall notify the State Board of Health and the chairman of the board of county commissioners of any other county or counties in which any portion of the proposed district lies, of the receipt of said petition, and shall request that a representative of the State Board of Health hold a joint public hearing with the county commissioners of all the counties in which a portion of the district lies concerning the creation of the proposed sanitary district. The State Health Director and the chairman of the board of county commissioners shall name a time and place within the proposed district at which the public hearing shall be held. The chairman of the board of county commissioners shall give prior notice of such hearing by posting a notice at the courthouse door of the county and also by publication in a newspaper published in said county at least once a week for four successive weeks; and in the event such hearing is to be before a joint meeting of the boards of county commissioners of more than one county, or in the event the land to be affected lies in more than one county, then a like publication and notice shall be made and given in each of said counties. In the event that all matters pertaining to the creation of this sanitary district cannot be concluded at the hearing, any such hearing may be continued to a time and place within the proposed district named by the representative of the State Board of Health. (1927, c. 100, ss. 2-4; 1951, c. 178, s. 1; 1957, c. 1357, s. 1; 1959, c. 1189, s. 1.)

Editor's Note.—The 1959 amendment inserted the word "resident" near the beginning of the second sentence. Section 3 of the amendatory act provides: "The powers granted by this act are in addition to and not in substitution for any other powers heretofore or hereafter granted."

Withdrawal of Names from Petition.—Signers of a petition for the creation of a sanitary district under this article are entitled as a matter of right to withdraw their names from the petition at any time before action is taken on the petition by the county commissioners on the question of approval,

and when their withdrawal reduces the number of signers to less than 51% of the resident freeholders within the proposed district the board of county commissioners is without jurisdiction and its approval of the petition may be enjoined. *Idol v. Hanes*, 219 N. C. 723, 14 S. E. (2d) 801 (1941); *Deal v. Enon Sanitary Dist.*, 245 N. C. 74, 95 S. E. (2d) 362 (1956).

The required public hearing contemplates that every interested person has a right to be heard. *Deal v. Enon Sanitary Dist.*, 245 N. C. 74, 95 S. E. (2d) 362 (1956).

§ 130-125. Declaration that district exists; status of industrial villages within boundaries of district.—If, after such hearing the State Board of Health and the county commissioners concerned shall deem it advisable to comply with the request of said petition, and determine that a district for the purpose or purposes therein stated should be created and established, and State Board of Health shall adopt a resolution to that effect, defining the boundaries of such district and declaring the territory within such boundaries to be a sanitary district; provided that the State Board of Health may make minor deviation, in defining the boundaries, from those prescribed in the petition when the Board determines that it is advisable in the interest of the public health; provided further that any industrial plant and its contiguous village shall be included within or excluded from the areas embraced within such sanitary district as expressed in the application of the person, persons or corporation owning or controlling such industrial plant and its contiguous village, said application to be filed with the State Board of Health on or before the date of the public hearing as hereinbefore provided. Each district when created shall be identified by a name or number assigned by the State Board of Health. (1927, c. 100, s. 5; 1957, c. 1357, s. 1.)

Validity.—The validity of this article is not affected by the provision that certain industrial enterprises and villages situate therein may be excluded upon application of the owners. *Drysdale v. Prudden*, 195 N. C. 722, 143 S. E. 530 (1928).

No sanitary district exists unless legally

created and established by the State Board of Health. *Deal v. Enon Sanitary Dist.*, 245 N. C. 74, 95 S. E. (2d) 362 (1956).

Establishing Territory Different from That Described in Petition.—See *Deal v. Enon Sanitary Dist.*, 245 N. C. 74, 95 S. E. (2d) 362 (1956).

§ 130-126. Election and terms of office of sanitary district boards.—The State Board of Health shall cause copies of the resolution adopted creating the sanitary

district to be sent to the board or boards of county commissioners of the county or counties in which all or parts of the territory within the district is located, whereupon the said board or boards of county commissioners shall hold a meeting or joint meeting for the purpose of electing a sanitary district board of three members, residents within the district, which shall thereafter be the governing body of the sanitary district. At this meeting or joint meeting of said board or boards of county commissioners there shall be elected three members of said sanitary district boards who shall serve until their successors are elected and qualified. At the next general election following said appointment by the board of county commissioners, candidates for said district board shall be nominated in the primary and elected at the general election as are county officers, except that the nomination and election shall be confined to said district.

When more than six candidates qualify for a primary, then the six candidates receiving the highest number of votes in the primary shall be nominated as candidates for election in the general election, and the three candidates receiving the highest number of votes in the general election shall be elected as members of said sanitary district board. When six or less candidates qualify for the primary, then each shall be declared to be a candidate in the general election without their names being voted upon in the primary. The primary and general election shall be nonpartisan, and each shall be conducted by the board of elections in the county in which the sanitary district is located. The said board of elections is authorized and empowered to cause a special election to be held at such time or times as it may designate, if necessary to break a tie between any candidate in the primary or general election: Provided, that this paragraph shall apply only to sanitary districts located wholly within the limits of a single county, and which adjoin and are contiguous to cities having a population of fifty thousand or more. The said board of elections shall canvass the returns from any primary or general election and within ten days thereafter certify the results thereof to the clerk of the superior court. The clerk of the superior court in each county is authorized, directed and empowered to take and file the oaths of office of those persons elected.

Prior to the appointment of a sanitary district board by the board or boards of county commissioners or prior to the election of the members of a sanitary district board at any general election, the board or boards of county commissioners may by resolution determine that such sanitary district board shall consist of five members, residents within such district. In such case, when more than ten candidates for membership on such sanitary district board qualify for a primary, then the ten candidates receiving the highest number of votes in the primary shall be nominated as candidates for election in the next general election, and the five candidates receiving the highest number of votes in the general election shall be elected as members of said sanitary district board; when ten or less candidates qualify for the primary, then each shall be declared to be a candidate in the general election without his name being voted upon in the primary. The primary and general election shall be nonpartisan, and each shall be conducted by the board of elections in the county in which the greater portion of the qualified voters of the sanitary district are located. The said board of elections is authorized and empowered to cause a special election to be held at such time or times as it may designate, if necessary to break a tie between any candidates in the primary or general election.

The members of the board so nominated and elected shall be residents of the district. They shall qualify by taking the oaths of office on the first Monday in December following their election. The term of office shall be two years and until their successors qualify.

Prior to the appointment of a sanitary district board by the board or boards of county commissioners or prior to the election of the members of a sanitary district board at any general election, the board or boards of county commissioners may by resolution and upon the request of the sanitary district board determine that such sanitary district board shall consist of five members, residents within such district,

that the term of office of the members of such sanitary district board shall be four (4) years and until their successors qualify, that the terms be staggered so that at the first biennial election after the adoption of such resolution, and every four (4) years thereafter, three members of the sanitary district board shall be elected, and that at the next biennial election, and every four (4) years thereafter, two members of the sanitary district board shall be elected. Upon the adoption of such a resolution by the board or boards of county commissioners, said board or boards of county commissioners shall elect two members of said sanitary district board who shall serve until their successors are elected and qualified. In case of the adoption of such a resolution, when more than six candidates qualify for a primary at the next election following such adoption, and every four (4) years thereafter, then the six candidates receiving the highest number of votes in the primary shall be nominated as candidates for election in the general election, and the three candidates receiving the highest number of votes in the general election shall be elected as members of the sanitary district board. When six or less candidates qualify for the primary, then each shall be declared to be a candidate in the general election without their names being voted upon in the primary. The primary and general elections shall be nonpartisan, and each shall be conducted by the board of elections in the county in which the sanitary district is located. The said board of elections is authorized and empowered to cause a special election to be held at such time or times as it may designate, if necessary to break a tie between any candidates in the primary or general election. When more than four candidates qualify for a primary, preceding the second general election after the adoption of such a resolution, and every four (4) years thereafter, then the four candidates receiving the highest number of votes in the primary shall be nominated as candidates for election in the general election, and the two candidates receiving the highest number of votes in the general election shall be elected as members of the sanitary district board and when four or less candidates qualify for the primary, then each shall be declared to be a candidate in the general election without their names being voted upon in the primary. This primary and general election shall also be nonpartisan, and shall be conducted by the board of elections in the county in which the sanitary district is located and said board of elections is authorized and empowered to cause a special election to be held at such time or times as it may designate, if necessary to break a tie between any candidates in the primary or general election. (1927, c. 100, s. 6; 1943, c. 602; 1953, c. 798; 1955, c. 1073; 1957, c. 1357, s. 1; 1963, c. 644.)

Local Modification.—Alamance: 1955, c. 588.

Editor's Note.—The 1963 amendment added the last paragraph.

§ 130-127. Vacancy appointments to district boards.—Hereafter any vacancy that may exist in any sanitary district board of any sanitary district of the State for any cause shall be filled until the next general election by the county commissioners of the county in which said sanitary district may be situated. Provided, that if the district is located in more than one county, the vacancy shall be filled by the county commissioners of the county from which the vacancy occurred. (1935, c. 357, s. 2; 1957, c. 1357, s. 1.)

§ 130-128. Corporate powers.—When a sanitary district is organized as herein provided the sanitary district board selected under the provisions of this article shall be a body politic and corporate and as such may sue and be sued in matters relating to such sanitary district. In addition, such board shall have the following powers:

- (1) To acquire, construct, maintain and operate a sewerage system, sewage disposal or treatment plant, water supply system, water purification or treatment plant and such other utilities as may be necessary for the preservation and promotion of the public health and sanitary welfare within the district, such utilities to be constructed, operated, and main-

tained in accordance with rules and regulations promulgated by the State Board of Health.

- (2) To issue certificates of indebtedness against the district in the manner hereinafter provided.
- (3) To issue bonds of the district in the manner hereinafter provided.
- (4) To cause taxes to be levied and collected upon all taxable property within the district sufficient to meet the obligations of the district evidenced by bonds, certificates of indebtedness and revenue anticipation notes issued against the district and to pay all obligations incurred by the district in the performance of all of its lawful undertakings.
- (5) To acquire, either by purchase, condemnation or otherwise and hold real and personal property, easements, rights-of-way and water rights in the name of the district within or without the corporate limits of the district, necessary or convenient for the construction or maintenance of the works of the district.
- (6) To employ such engineers, counsel and other persons as may be necessary to carry into effect any projects undertaken and to fix the compensation of such persons.
- (7) To negotiate and enter into agreements with the owners of existing water supplies, sewerage systems or other such utilities as may be necessary to carry into effect the intent of this article.
- (8) To formulate rules and regulations necessary for the proper functioning of the works of the district, but such rules and regulations shall not conflict with rules and regulations promulgated by the State Board of Health, or the local board of health having jurisdiction over the area.
- (9)
 - a. To contract with any person, firm, corporation, city, town, village or political subdivision of the State both within or without the corporate limits of the district to supply raw water without charge to said person, firm, corporation, city, town, village or political subdivision of the State in consideration of said person, firm, corporation, city, town, village or political subdivision permitting the contamination of its source of water supply by discharging sewage therein and to construct all improvements necessary or convenient to effect the delivery of said water at the expense of the district when in the opinion of the sanitary district board and the State Board of Health, it will be for the best interest of the district.
 - b. To contract with any person, firm, corporation, city, town, village or political subdivision of the State within or without the corporate limits of the district to supply raw or filtered water to said person, firm, corporation, city, town, village, or political subdivision of the State where the service is available: Provided, however, that for service supplied outside the corporate limits of the district, the sanitary district board may fix a different rate from that charged within the corporate limits but shall in no case be liable for damages for a failure to furnish a sufficient supply of water.
 - c. To contract with any person, firm, corporation, city, town, village or political subdivision of the State within or without the corporate limits of the district for the treatment of the district's sewage in a sewage disposal or treatment plant owned and constructed or to be constructed by such person, firm, corporation, city, town, village or political subdivision of the State and upon such terms and conditions as the governing body of such district and person, firm, corporation or the governing body of such city, town, village or political subdivision of the State shall agree upon.
- (10) After adoption of a plan as provided in G. S. 130-133, the sanitary district board may, in its discretion, alter or modify such plan if, in the opinion

of the State Board of Health, such alteration or modification does not constitute a material deviation from the objective of such plan. The alteration or modification must be approved by the State Board of Health and may provide among other things for the construction of a water line for the supply of any person, firm, corporation, city, town, village or political subdivision of the State either within or without the corporate limits of the district instead of a sewage disposal line and other improvements, where such alteration or modification would permit the disposal of sewage at a point nearer the district either within or without the corporate limits, thereby contaminating the prevailing water supply of the person, firm, corporation, city, town, village or political subdivision of the State to whom the water is to be supplied and would effect a saving to the district, and the sanitary district board may appropriate or reappropriate money of the district for carrying out such plans as altered or modified.

- (11) Subject to the approval of the State Board of Health, to engage in and undertake the prevention and eradication of diseases transmissible by mosquitoes by instituting programs for the eradication of the mosquito.
- (12) To collect and dispose of garbage, waste, and other refuse by contract or otherwise.
- (13) To establish a fire department for the protection of life and property within the district, or to contract with cities, counties or other governmental units to furnish fire-fighting apparatus and personnel for use in the district.
- (14) The district, and in the event the district enters into a contract with any other governmental unit for the collection and disposal of garbage, waste or other refuse or for fire protection, as aforesaid, then, in that event, the district and such other governmental unit shall each have and enjoy all privileges and immunities that are now granted to other governmental units in exercising the governmental functions of collecting garbage, waste and other refuse, and furnishing fire protection.
- (15) To use the income of the district, and if necessary, to cause taxes to be levied and collected upon all the taxable property within the district sufficient to pay the costs of collecting and disposing of garbage, waste and other refuse, and to provide fire protection in said district, such taxes to be levied and collected at the same time and in the same manner as taxes for debt service as provided in G. S. 130-141.
- (16) To establish a capital reserve fund for the district in accordance with the following provisions:
 - a. The district board shall pass a resolution declaring that a capital reserve fund is thereby established, which resolution shall state that said fund shall consist of unencumbered balances and unappropriated surplus revenues evidenced by money derived from collections of ad valorem taxes of the district or from service charges and rates applied by the district board in accordance with law or from proceeds of the sale of real or personal property of the district, that it shall take effect when the provisions thereof are approved by the Local Government Commission, and the district board shall designate therein some bank or trust company as depository in which the capital reserve fund shall be placed to the credit of a special account to be known as "..... District, Capital Reserve Fund."
 - b. Upon adoption of a resolution by the district board providing therefor and with the approval of the Local Government Commission, the capital reserve fund may be increased at any time

with money from like source or sources as those stated in establishing resolution.

- c. Withdrawal from the capital reserve fund shall be of two kinds, temporary and permanent. Temporary withdrawal may be made:

1. In anticipation of the collections of taxes and other revenues of the district of the current fiscal year in which such withdrawal is made and for the purpose of paying principal or interest of bonds of the district falling due within three months, but the amount of such withdrawal shall be repayable to the capital reserve fund not later than thirty days after the close of the fiscal year in which such withdrawal is made, and
2. For investment or reinvestment in bonds, notes or certificates of indebtedness of the United States of America, in bonds or notes of the State of North Carolina, in bonds of the district, or in bonds of any city, town or county in North Carolina.

Permanent withdrawal may be made for the purpose of acquiring property for the district by purchase or otherwise, or for extending, enlarging, improving, replacing or reconstructing any properties of the district incident to or deemed necessary for the exercise of the powers granted by law to the district board. Each withdrawal shall be authorized by resolution of the district board and approved by the Local Government Commission and shall be by check drawn on the designated depository of the capital reserve fund upon which such approval by the Commission shall be endorsed by the secretary of the Commission or by an assistant designated by him for that purpose: Provided, however, the State of North Carolina shall not be liable for misapplication of any moneys withdrawn from the capital reserve fund by reason of such endorsement, such endorsement only being prima facie evidence of approval of the withdrawal authorized. No permanent withdrawal shall be made unless, after such withdrawal, there shall remain in the capital reserve fund an amount equal to the sum of the principal and interest of bonds of the district maturing either in the fiscal year in which the withdrawal is made or in the ensuing fiscal year, whichever is greater, except that, when the amount of authorized and unissued bonds of the district is determined by the sanitary district board to be insufficient for financing the cost of the improvements or properties for which such bonds were authorized, all or any part of such remaining amount may be withdrawn for the purpose of meeting such insufficiency.

- d. All moneys stated in the establishing resolution or in a resolution providing for increase of the capital reserve fund, when the provisions of such resolutions are approved by the Local Government Commission, and all realizations and earnings from temporary withdrawals shall be deposited in the designated depository of the capital reserve fund by the officer or officers having the charge and custody of such moneys, and it shall be the duty of such officer or officers to simultaneously report each of such deposits to the Local Government Commission.

- (17) To make rules and regulations in the interest of and for the promotion and protection of the public health and the welfare of the people within the sanitary district, and for such purposes to possess the following powers:

- a. To require any person, firm or corporation owning, occupying or controlling improved real property within the district to connect with either or both, the water or sewerage systems of the district, when the local health director, having jurisdiction over the area in which the greater portion of the residents of the district reside, determines that the health of the people residing within the district will be endangered by a failure to connect.
 - b. To require any person, firm or corporation owning, occupying or controlling improved real property within the district where the water or sewerage systems of the district are not immediately available or it is impractical to connect therewith to install sanitary toilets, septic tanks and other health equipment or installations in accordance with the requirements of the State Board of Health.
 - c. To require any person, after notice and hearing, to abate any nuisance detrimental or injurious to the public health of the district. The person being ordered to abate the nuisance may appeal such order to the local board of health as provided in G. S. 130-20.
 - d. To abolish, or to regulate and control the use and occupancy of all pigsties and other animal stockyards or pens within the district and for an additional distance of 500 feet beyond the outer boundaries of the district, unless such 500 feet be within the corporate limits of some city or town.
 - e. Upon the noncompliance by any person, firm or corporation of any rule and regulation promulgated and enacted hereunder, the sanitary district board shall cause to be served upon the person, firm or corporation who fails to so comply a notice setting forth the rule and regulation and wherein the same is being violated, and such person, firm or corporation shall have a reasonable time, as determined by the local health director of the area within which the noncomplying person resides, from the service of such notice in which to comply with such rule and regulation.
- (18) For the purpose of promoting the public health, safety, morals, and the general welfare of the State, the sanitary district boards of the various sanitary districts of the State are hereby empowered, within the areas of said districts and not under the control of the United States or the State of North Carolina or any agency or instrumentality thereof, to designate, make, establish and constitute as zoning units any portions of said sanitary districts in accordance with the manner, method and procedure as follows:
- a. No sanitary district board, under the provisions of this subsection, shall designate, make, establish and constitute any area in their respective sanitary districts a zoning area until a petition signed by two-thirds ($\frac{2}{3}$) of the qualified voters in said area as shown by the registration books used in the last general election, together with a petition signed by two-thirds ($\frac{2}{3}$) of the owners of the real property in said area as shown by the records in the office of the register of deeds for the county on the date said petition is filed with any sanitary district board, and a public hearing after twenty days' notice has been given. Such notice must be published in a newspaper of general circulation in said county at least two times, and a copy of said notice posted at the courthouse of said county and in three other public places in the sanitary district for twenty days before the date of the hearing. The petition must be accompanied by a map of any proposed zoning area.
 - b. When any portion of any sanitary district has been made, established and constituted a zoning area, as herein provided, the

sanitary district boards as to any such zoning areas shall have, exercise and perform all of the rights, privileges, powers and duties granted to municipal corporations under article 14, chapter 160, of the General Statutes of North Carolina, as amended, provided, however, the sanitary district boards shall not be required to appoint any zoning commission or board of adjustment, and upon the failure to appoint either said sanitary district boards shall have, exercise and perform all the rights, privileges, powers and duties granted to said zoning commission and board of adjustment.

- c. The governing body of any city, town or sanitary district is hereby authorized to enter into agreements with any other city, town or sanitary district for the establishment of a joint zoning commission, and to cooperate fully with each other.
- d. The sanitary district boards are hereby authorized to appropriate such amounts of money as they deem necessary to carry out the effective provisions of this subsection, and are authorized to enforce its rules and regulations in order to give effect to this subsection, and for such purposes to use the income of the district or cause taxes to be levied and collected upon the taxable property within the district to pay such costs.
- e. None of the provisions of chapter 176 of the Public Laws of North Carolina, Session 1931 (the proviso to G. S. 160-173), shall apply to any sanitary district.
- f. This subdivision shall apply only to sanitary districts which adjoin and are contiguous to any incorporated town and are located within three miles or less of the boundaries of two other cities or towns. (1927, c. 100, s. 7; 1933, c. 8, ss. 1, 2; 1935, c. 287, ss. 1, 2; 1941, c. 116; 1945, c. 651, ss. 1, 2; 1947, c. 476; 1949, c. 880, s. 1; 1949, cc. 1130, 1145; 1951, c. 17, s. 1; 1951, c. 1035, s. 1; 1957, c. 1357, s. 1; 1961, cc. 669, 865, 1155; 1963, c. 1232.)

Local Modification.—Caswell: 1939, c. 3; 1941, c. 89; 1943, c. 287; 1945, c. 20; Moore: 1939, c. 3; Rockingham: 1947, cc. 565, 849; Dare (and municipalities and sanitary districts therein), as to subdivision (13): 1959, c. 1079.

Editor's Note.—The first 1961 amendment rewrote paragraph f of subdivision (18). The second 1961 amendment added paragraph c to subdivision (9). The third 1961 amendment added the exception clause at the end of subdivision (16), paragraph c.

The 1963 amendment made paragraph c of subdivision (9) applicable to contracts with persons, firms or corporations.

For comment on the fire protection provisions, see 19 N. C. Law Rev. 498.

Services and Rates Not Subject to Control of Utilities Commission.—A sanitary district which, as a part of its functions, furnishes drinking water to the public and also filtered water for industrial consumers is a quasi-municipal corporation, and is not under the control and supervision of the North Carolina Utilities Commission as to services or rates. *Halifax Paper Co. v. Roanoke Rapids Sanitary Dist.*, 232 N. C. 421, 61 S. E. (2d) 378 (1950).

Lease of Filter Plant.—Defendant sanitary district was unable to raise funds for the construction of a filter plant and, in order to carry out the purposes for which it was created, leased a cotton mill's filter

plant under an agreement that the mill should get its water at cost of filtering and should have priority over other industrial consumers. It was held that the lease contract was in the public interest and the district had authority to execute it, and the contract was valid since it did not impair the ability of the district to discharge its duties to the public nor unlawfully discriminate between commercial customers similarly circumstanced. *Halifax Paper Co. v. Roanoke Rapids Sanitary Dist.*, 232 N. C. 421, 61 S. E. (2d) 378 (1950).

Under the facts of the preceding paragraph, the district agreed with plaintiff paper mill to furnish it water from the surplus remaining after the needs of the district and lessor enterprise had been satisfied. It was held that upon increased demand by the lessor, resulting in a diminution of the surplus available for sale to other industrial consumers, the district had the power to reduce the amount of water furnished the paper mill proportionately, since the paper mill had no right to any water except out of surplus water remaining after the requirements of the district and the lessor enterprise had been satisfied, and since there was no discrimination in service to commercial users similarly circumstanced in regard to such surplus. *Halifax Paper Co. v. Roanoke Rapids Sanitary Dist.*, 232 N. C. 421, 61 S. E. (2d) 378 (1950).

§ 130-129. Organization of board.—Upon election, a sanitary district board shall meet and elect one of its members as chairman, and another member as secretary. Each member of the board may receive a per diem compensation of eight dollars (\$8.00) when actually engaged in the business of the district, payable from the funds of the district. The board may employ a clerk, stenographer, or such other assistants as it may deem necessary and may fix the duties and compensation thereof.

A sanitary district board may at any time remove any of its employees and may fill any vacancies however arising. (1927, c. 100, s. 8; 1957, c. 1357, s. 1.)

Local Modification.—Halifax: 1961, c. 883.

§ 130-130. Power to condemn property.—When in the opinion of the sanitary district board, it is necessary to procure real estate, right-of-way or easement within and/or without the corporate limits of the district for any of the improvements authorized by this article, they may purchase the same or if the board and the owner or owners thereof are unable to agree upon its purchase and sale, or the amount of damage to be awarded therefor, the board may condemn such real estate, right-of-way or easement within and/or without the corporate limits of the district and in so doing the ways, means and method and procedure of Chapter 40 of the General Statutes of the State of North Carolina entitled "Eminent Domain" shall apply. Section 40-10 shall not, however, be applicable to such condemnation proceedings. In the event the owner or owners shall appeal from the report of the commissioners, it shall not be necessary for the sanitary board to deposit the money assessed with the clerk, but it may proceed and use the property to be condemned until the final determination of the action. (1927, c. 100, s. 9; 1933, c. 8, s. 3; 1957, c. 1357, s. 1.)

Section Requires Just Compensation for Damages.—When a sanitary district, in the exercise of its power of eminent domain, took easements and rights of way for sewer lines over the lands of defendants, it became obligated by the North Carolina Constitution and this section, under which it acted, to pay to defendants just compensation for the damage done. *North Asheboro-Central Falls Sanitary Dist. v. Canoy*, 252 N. C. 749, 114 S. E. (2d) 577 (1960).

Measure of Compensation.—Where a sanitary district condemns an easement for sewer lines, together with the perpetual right to enter upon the land for the purpose of inspecting its lines and making necessary repairs, replacements, additions and alterations thereon, with right of the landowners to use the land for all lawful purposes not

inconsistent with the rights acquired by the district, the measure of compensation is the difference in the market value of the land free of the easement and the market value of the land subject to the easement. *North Asheboro-Central Falls Sanitary Dist. v. Canoy*, 252 N. C. 749, 114 S. E. (2d) 577 (1960).

Proper Use of Easements.—A sanitary district, acting under this section to acquire easements to construct and maintain sanitary sewer lines, can use the property taken for only the limited purpose described in the petition, and any other use by it or anyone else would require additional compensation. *North Asheboro-Central Falls Sanitary Dist. v. Canoy*, 252 N. C. 749, 114 S. E. (2d) 577 (1960).

§ 130-131. Construction of systems by corporations or individuals.—Whenever a corporation or the residents of any locality within the sanitary district shall desire a water supply, sewerage system or any part thereof and the sanitary district board shall deem it inadvisable or impracticable at that time, due to remoteness from its general system or other cause, for the sanitary district to build such system, such corporation or residents may nevertheless build and operate such system at its or their own expense but it shall be constructed and operated under plans, specifications and regulations approved by the district board, and by the State Board of Health. (1927, c. 100, s. 10; 1957, c. 1357, s. 1.)

§ 130-132. Reports.—Upon the election of any sanitary district board it shall become the duty of the board to employ competent engineers to make a report or reports on the problems of the sanitary district, which report or reports shall be prepared and filed with the sanitary district board. Such report or reports shall embrace the following:

- (1) Suitable comprehensive maps showing the boundaries of the sanitary district and in a general way the location of the various parts of the work that is proposed to be done and such information as may be useful for a thorough understanding of the proposed undertaking.
- (2) A general description of existing facilities for carrying out the objects of the district.
- (3) A general description of the various plans which might be adopted for accomplishment of the objects of the district.
- (4) General plans and specifications for such work.
- (5) General descriptions of property it is proposed to be acquired or which may be damaged in carrying out the work.
- (6) Comparative detail estimates of cost for the various construction plans.
- (7) Recommendations. (1927, c. 100, s. 11; 1957, c. 1357, s. 1.)

§ 130-133. Consideration of reports and adoption of a plan.—The report or reports filed by the engineers pursuant to G. S. 130-132 shall be given careful consideration by the sanitary district board, and said board shall adopt a plan, but before adopting such plan said board may, in its discretion, hold a public hearing, giving due notice of the time and place thereof, for the purpose of considering objections to such plan. The plan adopted as aforesaid shall be submitted by the sanitary district board to the State Board of Health and shall not become effective unless and until it is approved by the State Board of Health.

The provisions of this section and of G. S. 130-132 above shall apply when it shall have been determined by the sanitary district board that consummation of the plan is predicated upon the issuance of bonds of the district, except that such provisions shall not apply to a proposed purchase of firefighting equipment and apparatus. Failure to observe or comply with said provisions shall not, however, affect the validity of any bonds of a sanitary district which may be hereafter issued pursuant to this article. (1927, c. 100, s. 12; 1949, c. 880, s. 1; 1951, c. 17, s. 1; 1957, c. 1357, s. 1.)

§ 130-134. Resolution authorizing bond issue and purposes for which bonds may be issued.—Either before or after the adoption of the plan as aforesaid, the sanitary district board may pass a resolution or resolutions (hereinafter sometimes referred to as “bond resolution” or “bond resolutions”) authorizing the issuance of bonds of the sanitary district, but bonds for two or more unrelated purposes shall not be authorized by the same bond resolution; provided, however, that bonds for two or more improvements or properties mentioned together in any one or more of the clauses of this section may be treated as being for a single purpose and may be authorized by the same bond resolution. The negotiable bonds of a sanitary district may be issued for any one or more of the following purposes, which purposes may include land, rights in land or other rights necessary for the establishment thereof:

- (1) Acquisition, construction, reconstruction, enlargement of, additions or extensions to a water system or systems, a water purification or treatment plant or plants, a sanitary sewer system or systems, or a sewage treatment plant or plants, including interest on the bonds during construction and for one year after completion of construction if deemed advisable by the sanitary district board.
- (2) Construction, reconstruction or acquisition of an incinerator or incinerators or other facilities for the disposal of garbage, waste and other refuse.
- (3) Purchase of firefighting equipment and apparatus.
- (4) Acquisition, construction, reconstruction, enlargement of, additions or extensions to, a district building or buildings which may include a fire station and office and other district facilities.

Such resolution shall state:

- (1) In brief and general terms, the purpose for which the bonds are to be issued.
- (2) The maximum aggregate principal amount of the bonds.

- (3) That a tax sufficient to pay the principal and interest on the bonds when due shall be annually divided and collected on all taxable property within the sanitary district.
- (4) That the resolution shall take effect when and if it is approved by the voters of the sanitary district at an election.

Such resolution shall be published once a week for three successive weeks: Provided, however, the first of such publications shall be not later than the first publication of the notice of election required in G. S. 130-137. A statement in substantially the following form (the blanks being first properly filled in), with the printed signature of the secretary of the sanitary district board appended thereto, shall be published with the resolution:

The foregoing resolution was adopted by the sanitary district board of
 Sanitary District on the day of, 19.....,
 and was first published on the day of, 19.....
 Any action or proceeding questioning the validity of said resolution must be commenced within thirty days after its first publication.

.....
 Secretary, Sanitary
 District Board.

(1927, c. 100, s. 13; 1949, c. 880, s. 1; 1951, c. 17, s. 1; c. 846, s. 1; 1957, c. 1357, s. 1; 1963, c. 1247, s. 1.)

Editor's Note.—The 1963 amendment inserted the first subdivision (4).

§ 130-135. Limitation of action to set aside a bond resolution.—Any action or proceeding in any court to set aside a bond resolution adopted pursuant to this article, or to obtain any other relief upon the ground that such resolution is invalid, must be commenced within thirty days after the first publication thereof as provided in G. S. 130-134. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the resolution shall be asserted, nor shall the validity of such resolution be open to question in any court upon any ground whatever. (1949, c. 880, s. 1; 1951, c. 17, s. 1; 1957, c. 1357, s. 1.)

§ 130-136. Publication of resolution, notice and statement.—A resolution or notice or statement required by this article to be published shall be published in a newspaper published in the county in which the district lies or if the district lies in two or more counties, in a newspaper published in each such county, or if there is no newspaper published in a county in which the whole or a part of the district lies, then and in lieu of a newspaper published in such county in a newspaper which, in the opinion of the sanitary district board, has general circulation within the district. (1949, c. 880, s. 1; 1951, c. 17, s. 1; 1957, c. 1357, s. 1.)

§ 130-137. Call for election.—Following the adoption of a bond resolution by the sanitary district board the said board shall call upon the board or boards of county commissioners in the county or counties in which the district or any portion thereof is located to name election officers, set date, name polling places, and cause to be held an election within the district on the proposition of issuing bonds as set forth in such bond resolution. If, at such election a majority of the registered voters who shall vote thereon at such election shall vote in favor of the proposition submitted, the bonds set forth in the bond resolution may be advertised, sold and issued in the manner provided by law. Should the proposition of issuing bonds submitted at any election as provided under this article fail to receive the required number of affirmative votes, the sanitary district board may, at any time after the expiration of six months, cause another election to be held for the same objects and purposes or for any other objects and purposes. The expenses of holding bond elections shall be paid from the funds of the sanitary district.

The board of commissioners of the county in which said sanitary district is located,

if wholly located in a single county, may in their discretion at any special election held under the provisions of this article make the whole sanitary district a voting precinct, or may create therein one or more voting precincts as to them seems best to suit the convenience of voters, the said precinct not to be the general election precinct unless the boundaries of the sanitary district are coterminous with one or more whole general election precincts. If said sanitary district is located in more than one county, the election precincts therein shall be fixed by the board of the particular county in which the portion of the sanitary district is located.

The said board or boards of commissioners shall provide registration and polling books for each precinct in the sanitary district, the cost of the same to be paid from the funds of the sanitary district. The notice of the election shall be given by publication once a week for three successive weeks. It shall set forth the boundary lines of the district and the amount of bonds proposed to be issued. The first publication shall be at least thirty days before the election. At the first election after the organization of the sanitary district, a new registration of the qualified voters within the district shall be ordered and notice of such new registration shall be deemed to be sufficiently given if given at least thirty days before the close of the registration books by publication once in some newspaper published or circulated in said district. The notice of registration may be considered one of the three notices required of the election. Time of such registration shall as near as may be conform with that of the registration of voters in municipal elections as provided in G. S. 160-37. The published notice of registration shall state the days on which the books shall be open for registration of voters and place or places at which they will be open on Saturdays. The books of such new registration shall close on the second Saturday before the election. The Saturday before the election shall be challenge day and except as otherwise provided in this article, such election shall be held in accordance with the law governing general elections.

A ballot shall be furnished to each qualified voter in said election, which ballot may contain the words "For approval of the bond resolution adopted by the sanitary district board of Sanitary District on the day of, 19....., authorizing the issuance of not exceeding \$..... of bonds of said sanitary district (briefly stating the purpose of such bonds), and the levy of a tax for the payment thereof," and the words "Against approval of the bond resolution adopted by the sanitary district board of Sanitary District on the day of, 19....., authorizing the issuance of not exceeding \$..... of bonds of said sanitary district (briefly stating the purpose of such bonds), and the levy of a tax for the payment thereof," with squares opposite said affirmative and negative forms of the proposition submitted to the voters, in one of which squares the voter may make a cross (X) mark, but this form of ballot is not prescribed. Two or more bond resolutions adopted by the sanitary district board, each for a separate purpose as provided in G. S. 130-134 may be submitted at the same election and each may be stated on the same ballot as a separate proposition. After the election and after the vote has been counted, canvassed and returned to the board or boards of county commissioners, the election books shall be deposited in the office of the clerk of the superior court as polling books for the particular sanitary district involved. At any subsequent election, whether upon the recall of an officer as provided in G. S. 130-145 or for an additional bond issue in the particular district, a new registration may or may not be ordered as may be determined by the board of county commissioners interested in said election.

A statement of results of an election on the proposition of issuance of bonds showing the date of such election, the proposition submitted, the number of voters who voted for the proposition and declaring the result of the election shall be prepared and signed by a majority of the members of the sanitary district board and deposited with the clerk of the superior court of the county in which the district lies, or, if parts of the district lie in two or more counties, with the clerk of the superior

court of each such county. Such statement shall be published once. No right of action or defense founded upon the invalidity of such election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty days after the publication of such statement. (1927, c. 100, s. 14; 1949, c. 880, s. 1; 1951, c. 17, s. 1; 1957, c. 1357, s. 1.)

Editor's Note.—For a brief comment on the 1951 amendment to this section, see 27 N. C. Law Rev. 454.

§ 130-138. **Bonds.**—The sanitary district board shall, subject to the provisions of this article, and under competent legal and financial advice, prescribe by resolution the form of the bonds, including any interest coupons to be attached thereto, and shall fix the date, the maturities, the denomination or denominations, and the place or places of payment of principal and interest which may be at any bank or trust company within or without the State of North Carolina. The bonds shall not be sold at less than par and accrued interest nor bear interest at a rate or rates in excess of six per centum (6%) per annum. The bonds shall be signed by the chairman and secretary of the sanitary district board, and the seal of the board shall be impressed thereon, and any coupons attached thereto shall bear a facsimile of the signature of the secretary of said board in office at the date of the bonds or at the date of delivery thereof. The delivery of bonds so executed shall be valid, notwithstanding any change in officers or in the seal of the board occurring after the signing and sealing of the bonds. Bonds issued under this article shall be payable to bearer unless they are registered as hereinafter provided, and each coupon appertaining to a bond shall be payable to the bearer of the coupon. A sanitary district may keep in the office of the secretary of the sanitary district board, or in the office of a bank or trust company appointed by said board as bond registrar or transfer agent, a register or registers for the registration and transfer of its bonds, in which it may register any bond at the time of its issue or, at the request of the holder, thereafter. After such registration, the principal and interest of the bond shall be payable to the person in whose name it is registered except in the case of a coupon bond registered as to principal only, in which case the principal shall be payable to such person, unless the bond shall be discharged from registration by being registered as payable to bearer. After registration a bond may be transferred on such register by the registered owner in person or by attorney, upon presentation to the bond registrar, accompanied by delivery of a written instrument of transfer in a form approved by the bond registrar, executed by the registered owner. Upon the registration or transfer of a bond as aforesaid, the bond registrar shall note such registration or transfer on the back of the bond. A sanitary district may, by recital in its bonds, agree to register the bonds as to principal only, or agree to register them either as to principal only or as to both principal and interest at the option of the bondholder. Upon the registration of a coupon bond as to both principal and interest the bond registrar shall also cut off and cancel the coupons, and endorse upon the back of such bond a statement that such coupons have been cancelled. The proceeds from the sale of such bonds shall be placed in a bank in the State of North Carolina to the credit of the sanitary district board, and payments therefrom shall be made by vouchers signed by the chairman and secretary of the sanitary district board. The officer or officers having charge or custody of funds of the district shall require said bank to furnish security for the protection of deposits of the district as provided in G. S. 159-28.

Bonds issued for any purpose pursuant to this article shall mature within the period of years as hereinafter provided, each such period being computed from the date of the election upon the issuance thereof held under the provisions of G. S. 130-137. Such periods shall be for the purposes stated by clauses in G. S. 130-134 as follows: Clause (1), forty years; clause (2), twenty years; clause (3), ten years; clause (4), thirty years. Such bonds shall mature in annual installments or series,

the first of which shall be made payable not more than five years after the date of the first issued bonds of such issue, and the last within the aforesaid period. No such installment or series shall be more than two and one-half times as great in amount as the smallest prior installment or series of the same bond issue. If all of the bonds of any issue are not issued at the same time, the bonds at any one time outstanding shall mature as aforesaid. Such bonds may be issued either all at one time or from time to time in blocks, and different provisions may be made for different blocks. Bonds issued pursuant to this article shall be subject to the provisions of the Local Government Act. The cost of preparing, issuing, and marketing bonds shall be deemed to be one of the purposes for which the bonds are issued. (1927, c. 100, s. 15; 1949, c. 880, s. 1; 1951, c. 17, s. 1; c. 846, s. 2; 1957, c. 1357, s. 1; 1963, c. 1247, s. 2.)

Editor's Note.—The clauses (1), (2) and (3) of G. S. 130-134, referred to in the second paragraph of this section, are those relating to the purposes for which bonds may be issued.

The 1963 amendment inserted at the end of the second sentence of the second paragraph the words "clause (4), thirty years."

Bonds Valid as General Tax.—Bonds issued by a sanitary district formed in accordance with this article, are a valid obligation, and binding upon the property within the district as a general tax and not an assessment of property according to

benefits received. *Drysdale v. Prudden*, 195 N. C. 722, 143 S. E. 530 (1928).

Differentiating between Property Benefited and Not Benefited.—Bonds issued by a sanitary district for sewerage and a water supply under the provisions of this article, will not be declared invalid because not differentiating between property benefited and not benefited when the voters within the territory unanimously voted for their issuance, and having full notice and opportunity to do so, no one appeared to make objection on that ground. *Drysdale v. Prudden*, 195 N. C. 722, 143 S. E. 530 (1928).

§ 130-139. Additional bonds.—Whenever the proceeds from the sale of bonds issued by any district as in this article authorized shall have been expended or contracted to be expended and the sanitary district board shall determine that the interest or necessity of the district demands that additional bonds are necessary for carrying out any of the objects of the district, the board may again proceed as in this article provided to cause an election to be held for the issuance of such additional bonds and the issue and sale of such bonds and the expenditure of the proceeds therefrom shall be carried out as hereinbefore provided. In the event the proceeds of the sale of the bonds shall be in excess of the amount necessary for the purpose for which they were issued, such excess shall be applied to the payment of principal and interest of said bonds. (1927, c. 100, s. 16; 1933, c. 8, s. 4; 1949, c. 880, s. 1; 1951, c. 17, s. 1; 1957, c. 1357, s. 1.)

§ 130-140. Funding or refunding bonds.—A sanitary district may issue its negotiable funding or refunding bonds for the purpose of funding or refunding valid indebtedness of the sanitary district if such debt be payable at the time of the passage of the bond resolution authorizing bonds to fund or refund such debt, or be payable within one year thereafter, or if such debt, although payable more than one year thereafter, is to be cancelled prior to its maturity and simultaneously with the issuance of the bonds to fund or refund such debt. The word "indebtedness" or "debt" as used in this section includes the principal of bonds, certificates of indebtedness and revenue anticipation notes, and includes the principal of funding bonds, refunding bonds and other evidences of indebtedness heretofore or hereafter issued pursuant to this article.

All such funding or refunding bonds shall be authorized by a bond resolution passed by the sanitary district board, which bond resolution shall state:

- (1) In brief and general terms the purpose for which the bonds are to be issued, including a brief description of the indebtedness to be funded or refunded sufficiently to identify such indebtedness.
- (2) The maximum aggregate principal amount of the bonds.
- (3) That a tax sufficient to pay the principal and interest of the bonds when due shall be annually levied and collected on all taxable property within the sanitary district.

- (4) That the resolution shall take effect upon its passage and shall not be submitted to the voters.

Such bond resolution shall be published once a week for three successive weeks and a statement substantially in the form provided by G. S. 130-134 above shall be published with the bond resolution. Such funding or refunding bonds shall mature at any time or times, not later than forty years from their date. (1955, c. 705; 1957, c. 1357, s. 1.)

§ 130-141. Valuation of property; determining annual revenue needed.—

Upon the creation of a sanitary district and after each assessment for taxes thereafter the board or boards of county commissioners of the county or counties in which the sanitary district is located shall file with the sanitary district board the valuation of assessable property within the district. The sanitary district board shall then determine the amount of funds to be raised for the ensuing year in excess of the funds available from surplus operating revenues set aside as provided in G. S. 130-144 below to provide payment of interest and the proportionate part of the principal of all outstanding bonds, and retire all outstanding certificates of indebtedness, revenue anticipation notes issued against the district and to pay all obligations incurred by the district in the performance of its lawful undertakings.

The sanitary district board shall determine the number of cents per one hundred dollars (\$100.00) necessary to raise the said amount and so certify to the board or boards of county commissioners. The board or boards of county commissioners in their next annual levy shall include the number of cents per one hundred dollars (\$100.00) so certified by the sanitary district board in the levy against all taxable property within the district, which tax shall be collected as other county taxes are collected and every month the amount of tax so collected shall be remitted to the sanitary district board and deposited by the said board in a bank in the State of North Carolina separately from other funds of the district. Such levy may include an amount for reimbursing the county for expenses of levying and collecting said taxes, which amount shall be based upon such percentage of the collection of said taxes, not exceeding five per centum (5%) thereof, as may be agreed upon by the sanitary district board and the board of county commissioners, to be deducted from the collections and stated with each remittance to the sanitary district board, and such percentage of collections shall remain the same until revised or abolished by further agreement between said boards. The officer or officers having charge or custody of the funds of the district shall require said bank to furnish security for protection of such deposits as provided in G. S. 159-28.

The sanitary district board of any sanitary district, in lieu of collecting the taxes in the manner as hereinbefore provided, may cause to be listed by all the taxpayers residing within the district with the person designated by the district board, all the taxable property located within the district, and after determining the amount of funds to be raised for the ensuing year in excess of the funds available from surplus operating revenues set aside as provided in G. S. 130-144 to provide payment of interest and the proportionate part of the principal of all outstanding bonds, certificates of indebtedness, revenue anticipation notes issued against the district and to pay all obligations incurred by the district in the performance of all of its lawful undertakings, to determine the number of cents per one hundred dollars (\$100.00) necessary to raise said amount. The said sanitary district board in its next annual levy shall levy against all taxable property in the district the number of cents per one hundred dollars (\$100.00) necessary to raise the amount with which to pay the obligations of the district, including principal and interest on bonds, certificates of indebtedness, revenue anticipation notes and other lawful obligations of the district, which tax shall be collected in the same manner as taxes of other political subdivisions of the State of North Carolina are collected by a tax collector, to be selected by the sanitary district board of the sanitary district electing to assess, levy and collect

its taxes in the manner herein provided. The tax collector selected by said sanitary district board and the depository, in which said taxes so collected are deposited, shall qualify in the same manner and give the necessary surety bonds as are required of tax collectors and depositories of county funds in the county or counties in which said sanitary districts are located.

In any sanitary district located in two or more counties any one or more of which have different assessment ratios for tax purposes, the sanitary district board of such sanitary district shall, in order that all taxable property within the sanitary district shall be subject to taxation for sanitary district purposes the same as if the same assessment ratio were used throughout the entire sanitary district, (i) certify to the boards of commissioners of such counties such different determinations as to the numbers of cents per one hundred dollars (\$100.00) to be levied against the taxable property within the portion of the sanitary district located within such county or counties as will provide the amount of funds to be raised for the ensuing year for sanitary district purposes as hereinabove mentioned, or (ii) in the event the sanitary district board shall elect to levy and collect such sanitary district taxes itself, adjust the valuations of assessable property within the sanitary district as filed with the sanitary district board by the respective boards of commissioners. (1927, c. 100, s. 17; 1935, c. 287, ss. 3, 4; 1949, c. 880, s. 1; 1951, c. 17, s. 1; 1957, c. 1357, s. 1; 1959, c. 994; 1963, c. 1226.)

Editor's Note.—The 1959 amendment inserted the third sentence of the second paragraph.

The 1963 amendment added the fourth paragraph.

§ 130-142. Certificates of indebtedness in anticipation of taxes; loans under Local Government Act.—A sanitary district board may issue certificates of indebtedness in anticipation of the levying and collection of taxes to cover any or all expenses incurred by the board incident to the preparation of the engineers' report, holding of bond election or any other expenses incurred by the board. The amount of any certificates of indebtedness issued by the sanitary district board shall be included in the bond issue as hereinbefore provided. In the event that the election held within the district for the purpose of issuing bonds to provide funds for carrying out the objects of the district results in the defeat of said bonds the sanitary district board shall cause to be levied and collected a tax sufficient to pay such certificates of indebtedness or any other indebtedness incurred by the sanitary district board. Such tax shall be levied and collected in the same manner as provided in G. S. 130-141.

A sanitary district board may borrow money under the provisions of the Local Government Act, for the purpose of paying appropriations made for the current fiscal year in anticipation of the collection of the taxes and other revenues of such fiscal year, payable at such time or times, not later than thirty days after the expiration of the current fiscal year, as the governing board may fix. No such loans shall be made if the amount thereof, together with the amount of similar previous loans remaining unpaid, shall exceed fifty per cent (50%) of the amount of uncollected taxes and other revenue for the fiscal year in which the loan is made, as estimated by the chief financial officer and certified in writing by him to the governing body. (1927, c. 100, s. 18; 1935, c. 250; 1957, c. 1357, s. 1.)

§ 130-143. Engineers to provide plans and supervise work; bids.—The sanitary district board shall retain competent engineers to provide detail plans and specifications and to supervise the doing of the work undertaken by the district. As determined by the sanitary district board, such work or any portion thereof, may be done by the sanitary district board purchasing the material and letting a contract for the doing of the work or by letting a contract for furnishing all the material and the doing of the work.

Any contract shall be let to the lowest responsible bidder submitting a sealed bid

in response to a notice calling for such bid and published at least five times over a period of at least fifteen days in a newspaper or newspapers having a general circulation within the county or counties in which the district is located.

Any material to be purchased by the sanitary district board, the cost of which is in excess of one thousand dollars (\$1,000.00), shall be purchased from the lowest responsible bidder in the same manner as above provided.

All work done shall be in accordance with the plans and specifications prepared by the engineers in conformity with the plan adopted by the sanitary district board. (1927, c. 100, s. 19; 1957, c. 1357, s. 1.)

Local Modification.—Bessemer Sanitary District: 1953, c. 729, s. 3.

§ 130-144. Service charges and rates.—A sanitary district board shall immediately upon the placing into service of any of its works apply service charges and rates which shall, as nearly as practicable, be based upon the exact benefits derived. Such service charges and rates shall be sufficient to provide funds for the proper maintenance, adequate depreciation, and operation of the work of the district, and provided said service charges and rates would not thereby be made unreasonable, to include in said service charges and rates an amount sufficient to pay the principal and interest maturing on the outstanding bonds of the district and thereby make the project self-liquidating. Any surplus from operating revenues shall be set aside as a separate fund to be applied to the payment of interest on bonds, to the retirement of bonds or both. As the necessity arises the sanitary district board may modify and adjust such service charges and rates from time to time. (1927, c. 100, s. 20; 1933, c. 8, s. 5; 1957, c. 1357, s. 1.)

§ 130-145. Removal of member of board.—A petition carrying the signatures of twenty-five per cent (25%) or more of the legal voters within a sanitary district requesting the removal from office of one or more members of a sanitary district board for malfeasance or nonfeasance in office may be filed with the board of county commissioners of the county in which all or the greater portion of the legal voters of a sanitary district are located. Upon receipt of such petition the board of county commissioners or, in the event that the district is located in more than one county, a joint meeting of the boards of county commissioners shall be called, shall adopt a resolution calling an election, naming election officials, naming a date, and giving due notice thereof for the purpose of removing from office the member or members of the sanitary district board named in the petition. In the event that more than one member of a sanitary district board is subjected to recall in an election, the names of each member of the board subjected to recall shall appear upon separate ballots. If in such recall election, a majority of the legal votes within the sanitary district shall be cast for the removal of any member or members of the sanitary district board subject to recall, such member or members shall cease to be a member or members of the sanitary district board, and the vacancy or vacancies so caused shall be immediately filled as hereinbefore provided. The expenses of holding a recall election shall be paid from the funds of the sanitary district. (1927, c. 100, s. 21; 1957, c. 1357, s. 1.)

§ 130-146. Rights-of-way granted.—A right-of-way in, along, or across any county or State highway, street or property within a sanitary district is hereby granted to a sanitary district in case such right-of-way is found by the sanitary district board to be necessary or convenient for carrying out any of the work of the district. Any work done in, along, or across any State highway shall be done in accordance with the rules and regulations of the State Highway Commission. (1927, c. 100, s. 22; 1933, c. 172, s. 17; 1957, c. 1357, s. 1.)

§ 130-147. Returns of election.—In all elections provided for in this article the returns of such elections shall be made to the board or boards of county commis-

sioners in which the sanitary district lies, and said board or boards of county commissioners shall canvass and declare the result of said election, and this determination of said board or boards of county commissioners upon the result of said election shall be by them certified to the sanitary district board for its action thereupon. (1927, c. 100, s. 23; 1957, c. 1357, s. 1.)

§ 130-148. Procedure for extension of district.—(a) If, after any sanitary district shall have been created pursuant to the provisions of this article or the provisions of this article shall have been made applicable to any sanitary district, a petition signed by not less than fifteen per centum (15%) of the freeholders resident within any territory contiguous to and adjoining any such sanitary district shall be presented to the sanitary district board of such sanitary district praying that the territory described therein be annexed to and included within such sanitary district, the sanitary district board shall certify a copy thereof to the board of commissioners of the county in which such sanitary district is located and to the North Carolina State Board of Health, and said sanitary district board, through its chairman, shall request that a representative of the State Board of Health hold a joint public hearing with the sanitary district board on the question of such annexation. The State Health Director and the chairman of the sanitary district board shall name a time and place at which such public hearing shall be held. The chairman of said sanitary district board shall publish a notice of such public hearing once in a newspaper or newspapers published or circulating in the territory proposed to be annexed and in such sanitary district stating that a public hearing concerning such annexation will be held jointly by the State Board of Health and the sanitary district board on a date not less than fifteen (15) days after the publication of such notice. If, after the holding of such public hearing, the State Board of Health shall approve the annexation of the territory described in said petition, the State Board of Health shall advise said board of commissioners of such approval and, upon its receipt of such advice, the board of commissioners shall order and provide for the holding of a special election within the territory proposed to be annexed upon the question of such annexation.

If at or prior to such public hearing there shall be filed with the sanitary district board a petition signed by not less than fifteen per centum (15%) of the freeholders residing in the sanitary district requesting an election to be held therein on the question of such annexation, the sanitary district board shall certify a copy of such petition to the board of commissioners and the board of commissioners shall order and provide for the submission of such question to the qualified voters within the sanitary district. Any such election may be held on the same day as the election in the territory proposed to be annexed, and both such elections and the registration therefor may be held pursuant to a single notice.

The date or dates of any such election or elections, the election officers, the polling places and the election precincts shall be determined by the board of commissioners who shall also provide any necessary registration and polling books, and the expenses of holding any such elections shall be paid from the funds of the sanitary district.

Notice of any such election shall be given by publication once a week for three successive weeks, the first publication to be at least thirty (30) days before any such election, in a newspaper published or circulating in the territory to be annexed and, if an election is to be held in the sanitary district, in a newspaper published or circulating in said sanitary district. The notice shall state

- (1) The boundary lines of the territory proposed to be annexed to the sanitary district,
- (2) The boundary lines of the sanitary district after the annexation of such additional territory, and
- (3) That if a majority of the qualified voters voting at said election in the territory to be annexed and, if an election is being held in the sanitary district, a majority of the qualified voters voting at said election in such sanitary

district, shall vote in favor of such annexation, the territory so annexed to such sanitary district shall be subject to all debts of such sanitary district.

A new registration of the qualified voters in the territory to be annexed shall be ordered by the board of commissioners and, if an election is to be held in the sanitary district and such election is the first election held in said sanitary district after its organization, a new registration of the qualified voters of said sanitary district shall be ordered. If an election has already been held in said sanitary district, a supplemental registration of all qualified voters not theretofore registered may, at the discretion of the board of commissioners, be ordered and held in accordance with the provisions for registration as herein set forth. Notice of any such registration shall be given by the board of commissioners by publication once at least thirty (30) days before the close of the registration books and such notice of registration may be considered one of the three notices required of the election. The time and manner of any such registration shall, as near as may be, conform with that of the registration of voters provided in G. S. 163-31. The notice of any such registration shall state the days on which the books will be open for the registration of voters and the place or places at which they will be open on Saturdays. The books for any such registration shall close on the second Saturday before the election. The Saturday before the election shall be challenge day and, except as otherwise provided in this article, any such election shall be held in accordance with the law governing general elections.

A ballot shall be furnished to each qualified voter in any such election, which ballot may contain the words "For Annexation to Sanitary District" and the words "Against Annexation to Sanitary District", with squares opposite said affirmative and negative forms of the question of annexation submitted to the voters, in one of which squares the voter may make a cross (X) mark, but this form of ballot is not prescribed.

If a majority of the qualified voters voting at said election in the territory to be annexed and, if an election has been held in the sanitary district, a majority of the qualified voters voting at said election in such sanitary district, shall vote in favor of the annexation of such territory to such sanitary district, the sanitary district shall be deemed to be enlarged from and after the date of the declaration of the result of the election or elections by the sanitary district board and the territory so annexed to the sanitary district shall be subject to all debts of such sanitary district.

The returns of any such election shall be canvassed by the board of commissioners and certified to the sanitary district board which shall declare the result thereof.

A statement of the result of any such election shall be prepared and signed by a majority of the members of the sanitary district board, which statement shall show the date of any such election, the number of qualified voters within the territory to be annexed who voted for and against the annexation and, if an election has been held within the sanitary district, the number of qualified voters within said sanitary district who voted for and against the annexation. If a majority of the qualified voters voting at the election in the territory to be annexed and, if an election has been held in the sanitary district, a majority of the qualified voters voting at the election in the sanitary district shall vote in favor of the annexation, the statement of result shall so declare the result of the election and state that such territory is from the date of such declaration a part of such sanitary district and subject to all debts thereof. Such statement shall be published once. No right of action or defense founded upon the invalidity of any such election shall be asserted, nor shall the validity of any such election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty (30) days after the publication of such statement.

If a sanitary district is located in more than one county, or if a sanitary district and all or any part of the territory proposed to be annexed is located in more than one county, or if the territory proposed to be annexed is located in more than one

county, any petitions to be filed with, or requests to be made to, or actions or proceedings to be taken by the board of commissioners under the provisions of this section, shall be filed with, made to, or taken severally by the board of commissioners of each county in which any part of the sanitary district or of the territory to be annexed is located.

In any case where additional territory shall have been annexed to a sanitary district and the proposition of issuing bonds of the sanitary district after such annexation shall not be approved by the qualified voters at an election held within one year subsequent to such annexation fifty-one per cent (51%) or more of the resident freeholders within the territory so annexed may petition the sanitary district board for the removal and exclusion of such territory from the sanitary district, provided, however, that no such petition may be filed after bonds of the sanitary district shall have been approved in an election held at any time after such annexation. If the sanitary district board shall approve such petition it shall certify a copy thereof to the State Board of Health requesting that the petition be granted and shall certify additional copies to the board or boards of commissioners of the county or counties in which all or any part of the sanitary district is located. If, after a public hearing, conducted under the same procedure as provided herein for the annexation of additional territory, the State Board of Health shall deem it advisable to comply with the request of such petition, said Board shall adopt a resolution to that effect and shall redefine the boundaries of the sanitary district, which shall be the boundaries of the sanitary district as it existed before the annexation of such additional territory.

(b) Notwithstanding any other provisions of this section, if a petition for extension of the boundaries of a sanitary district is signed by not less than fifty-one per centum (51%) of the freeholders resident within the territory proposed to be annexed, it shall not be necessary to hold any election provided for by this section on the question of the extension of the boundaries of the sanitary district.

(c) Notwithstanding any other provisions of this section, if a petition for extension of the boundaries of a sanitary district is signed by the owners of all the real property within the territory proposed to be annexed, it shall not be necessary to hold any election or any hearings provided for by this section on the question of the extension of the boundaries of the sanitary district. (1927, c. 100, s. 24; 1943, s. 543; 1947, c. 463, s. 1; 1951, c. 897, s. 1; 1957, c. 1357, s. 1; 1959, c. 1189, s. 2; 1961, c. 732.)

Editor's Note.—The 1959 amendment rewrote this section. Section 3 of the amendatory act provides: "The powers granted by this act are in addition to and not in substitution for any other powers hereto-

fore or hereafter granted."

The 1961 amendment placed "(a)" immediately preceding "If" at the beginning of the section and added subsections (b) and (c).

§ 130-149. District and municipality extending boundaries and corporate limits simultaneously.—Whenever the boundaries of a sanitary district lie wholly within or are coterminous with the corporate limits of a city or town and such sanitary district provides the only public water supply and sewage disposal system for such city or town, the boundaries of such sanitary district and the corporate limits of such city or town may, if and when extended, be extended simultaneously in the following manner:

Twenty-five per cent (25%) or more of the resident freeholders within the territory proposed to be annexed to the sanitary district and to the city or town may petition the sanitary district board and the governing board of the city or town setting forth the boundaries of the area proposed to be annexed and the objects it is proposed to accomplish, which petition may also include any area already within the corporate limits of the city or town but not already within the boundaries of the sanitary district. Upon receipt of such petition the sanitary district board and the governing board of the city or town shall meet jointly, and before passing upon the petition shall hold a public hearing upon the same and shall give prior notice of such hearing by posting a notice at the courthouse door of their county and also

by publishing a notice at least once a week for four successive weeks in a newspaper published in said county. If at or after the public hearing the sanitary district board and the governing board of the city or town, acting jointly and with the approval of the State Board of Health, shall each approve the petition, then the question shall be submitted to a vote of all the qualified voters in the area or areas proposed to be annexed and in the sanitary district and in the city or town, voting as a whole. Such election to be held on date approved by the sanitary district board and by the governing board of the city or town.

At such election the qualified voters who present themselves to the election officials at the respective voting places shall be furnished with ballots upon which shall be written or printed the words "For Extension" and "Against Extension," and if at such election a majority of all the votes cast be "For Extension," then from and after the date of the declaration of the result of such election the territory and its citizens and property shall be subject to all debts, ordinances, and regulations in force in said sanitary district and in said city or town, and shall be entitled to the same privileges and benefits as other parts of said sanitary district and said city or town. The newly annexed territory shall be subject to the sanitary district and the city or town taxes levied for the fiscal year following the date of such annexation.

If at such election a majority of all the votes cast be "Against Extension" then there shall be no extension of either the boundaries of the sanitary district or the corporate limits of the city or town.

The costs of holding and conducting such election for annexation, as herein provided, shall be paid one-half ($\frac{1}{2}$) by the sanitary district and one-half ($\frac{1}{2}$) by the city or town.

Except as herein otherwise provided, when ordered by the sanitary district board and the governing board of the city or town acting jointly, the board of elections of the county in which the sanitary district and the city or town are located, shall call, hold, conduct and determine the result of such election, according to the provisions of § 160-448 of the General Statutes.

In any cases where the boundaries of a sanitary district and the corporate limits of a city or town are extended as herein provided, and the proposition of issuing bonds of the sanitary district as enlarged, in order to provide adequate facilities for the annexed area or areas, as may be determined by the sanitary district board, shall not be approved by the voters at an election held within one year subsequent to such extension, the territory so annexed may be disconnected and excluded from such sanitary district in the manner provided by G. S. 130-148; and if the territory so annexed is disconnected and excluded from such sanitary district it shall automatically and without any further procedure or action of any kind whatsoever be disconnected and excluded from such city or town, provided, however, if the petition also includes areas within the present corporate limits of the city or town but not within the present boundaries of the sanitary district, such areas already within the corporate limits of the city or town shall not be disconnected or excluded from such city or town under the provisions of this section.

The powers granted by this section shall be supplemental and additional to powers conferred by any other law and shall not be regarded as in derogation to any powers now existing. (1953, c. 977; 1957, c. 1357, s. 1.)

§ 130-150. Procedure for withdrawing from district.—In any sanitary district created under the provisions of this article which has no outstanding indebtedness, fifty-one per cent (51%) or more of the resident freeholders of a portion of any such sanitary district, with the approval of the sanitary district board, may petition the county commissioners of the county in which a major portion of the petitioners reside, that said portion of the district be disconnected and excluded from the said district and dissolved. If the board of county commissioners approves the petition, they shall submit to the residents of the entire district, at an election duly called for that purpose, the question of whether or not the portion of the district

petitioning to be excluded shall be excluded. If a majority of those voting at said election vote to allow the petitioning portion of the district to be excluded, the county commissioners shall transmit that fact to the State Board of Health who shall exclude said portion of the district, dissolve said portion, and redefine the limits accordingly. (1957, c. 1357, s. 1.)

§ 130-151. Dissolution of certain sanitary districts.—In any sanitary district established under this chapter which has no outstanding indebtedness, fifty-one per cent (51%) or more of the resident freeholders therein may petition the board of commissioners of the county in which all or the greater portion of the resident freeholders of the district are located to dissolve said district. Upon receipt of such petition, the board of county commissioners through its chairman, shall notify the State Board of Health and the chairman of the board of county commissioners of any other county or counties in which any portion of the district lies, of the receipt of such petition, and shall request that a representative of the State Board of Health hold a joint public hearing with the said county commissioners concerning the dissolution of the district. The State Health Director and the chairman of the board of county commissioners shall name a time and place within the district at which the public hearing shall be held. The chairman of the board of county commissioners shall give prior notice of such hearing by posting a notice at the courthouse door of the county and also by publication in a newspaper published in said county at least once a week for four successive weeks; and in the event such hearing is to be before a joint meeting of the boards of county commissioners of more than one county, then a like publication and notice shall be made and given in each of said counties. In the event that all matters pertaining to the dissolution of the sanitary district cannot be concluded at the hearing, any such hearing may be continued to a time and place determined by the representative of the State Board of Health. If after such hearing, the State Board of Health and the county commissioners concerned shall deem it advisable to comply with the request of said petition, the State Board of Health shall adopt a resolution to that effect, whereupon the district shall be deemed dissolved. (1943, c. 620; 1951, c. 178, s. 2; 1957, c. 1357, s. 1.)

§ 130-151.1. Dissolution of sanitary districts having no outstanding indebtedness and located wholly within or coterminous with corporate limits of city or town.—In any sanitary district established under this chapter which has no outstanding indebtedness and the boundaries of which are wholly located within or coterminous with the corporate limits of a city or town, fifty-one per cent (51%) or more of the resident freeholders within said district may petition the board of commissioners within the county in which all or the greater portion of the resident freeholders of the district are located to dissolve said district. Upon receipt of such petition, said board of commissioners through its chairman shall notify the State Board of Health, the chairman of the board of commissioners of any other county or counties in which any portion of the district lies and the governing body of the city or town within which such district lies of the receipt of such petition, and shall request that a representative of the State Board of Health hold a joint public hearing with said board or boards of commissioners and said governing body of such city or town. The Health Director, the chairman of the board of commissioners of the county in which all or the greater portion of the resident freeholders are located and the presiding officer of the governing body of such city or town shall name a time and place within the boundaries of the district and such city or town at which the public hearing shall be held. The chairman of said board of commissioners shall give prior notice of such hearing by posting a notice at the courthouse door of the county and also by publication in a newspaper published in said county and circulating in said district at least once a week for four successive weeks and, in the event such hearing is to be before a joint meeting of the boards of commissioners of more than one county, then a like publication and notice shall be

made and given in each of said counties. In the event that all matters pertaining to the dissolution of the sanitary district cannot be concluded at the hearing, any such hearing may be continued to a time and place determined by the representative of the State Board of Health. If, after such hearing, the State Board of Health, the board or boards of commissioners of the county or counties concerned and the governing body of such city or town shall deem it advisable to comply with the request of said petition, the State Board of Health shall adopt a resolution to that effect, whereupon the district shall be deemed dissolved and all taxes levied by such sanitary district which were levied prior to but which are collected after such dissolution shall vest in and inure to such city or town and all property, real, personal and mixed, of whatsoever character or description, or wheresoever situate, held, owned, controlled or used by such sanitary district upon such dissolution or which may thereafter be vested in such sanitary district, and any and all judgments, liens, rights of liens and causes of action of any and all kinds in favor of such sanitary district shall vest in and remain and inure to such city or town. From and after such dissolution, any taxes owing to such sanitary district shall be collected by such city or town and the proper officers thereof. (1963, c. 512, s. 1.)

Editor's Note.—Section 2 of the act inserting this section provides: "The powers granted by this act are in addition to and not in substitution for any other powers heretofore or hereafter granted by any other law."

§ 130-152. Further validation of creation of districts.—All actions prior to June 6, 1961, had and taken by the boards of commissioners of the various counties of the State, by the State Board of Health, by any officer thereof or by any other agency, board or officer of the State in the formation and creation, of sanitary districts in the State wheresoever situate, and the formation and creation, or the attempted formation and creation, of any and all such sanitary districts are hereby in all respects legalized, ratified, approved, validated and confirmed, and each and all such sanitary districts are hereby declared to be lawfully formed and created and to be in all respects legal and valid sanitary districts. (1953, c. 596, s. 1; 1957, c. 1357, s. 1; 1961, c. 667, s. 1.)

Editor's Note.—The 1961 act, although not referring to this section, has been treated as an amendment hereof, because its language was identical to this section as it appeared in the 1957 act, except that the 1961 act substitutes "June 6, 1961" for "April 1, 1957."

Section 3½ of the 1961 act provides that nothing therein shall be construed to create, revive, or renew proceedings to create a sanitary district where a court of competent jurisdiction has ruled that such district was not legally or properly created.

§ 130-152.1. Further validation of extension of boundaries of districts.—All actions prior to April 1, 1957, had and taken by the State Board of Health, any board of county commissioners, and any sanitary district board for the purpose of extending the boundaries of any sanitary district where said territory which was annexed contained no resident freeholders, and where the owner or owners of the real property annexed requested of such sanitary district board that said territory be annexed to and be within the boundaries of such sanitary district, are hereby legalized and validated, notwithstanding any lack of power to perform such acts or to take such proceedings, notwithstanding any defect or irregularity in such acts or proceedings. (1957, c. 1357, s. 1.)

§ 130-152.2. Additional validation of extension of boundaries of districts.—All actions and proceedings prior to May 1, 1959, had and taken by the State Board of Health or any officer or representative thereof, any board of county commissioners and any sanitary district board for the purpose of annexing additional territory to any sanitary district or with respect to any such annexation are hereby in all respects legalized, ratified, approved, validated and confirmed, notwithstanding any lack of power to take such actions or proceedings or any defect or irregularity in any such actions or proceedings and any and all such sanitary districts are hereby

declared to be lawfully extended to include such additional territory and as so extended to be in all respects legal and valid sanitary districts. (1959, c. 415, s. 2.)

§ 130-153. Further validation of dissolution of districts.—All actions prior to April 1, 1957, had and taken by the boards of commissioners of the various counties of the State, by the State Board of Health, by any officer thereof or by any other agency, board or officer of the State in the dissolution of any sanitary district in the State, and the dissolution or attempted dissolution of any such sanitary district, are hereby in all respects legalized, ratified, approved, validated and confirmed. (1953, c. 596, s. 2; 1957, c. 1357, s. 1.)

§ 130-154. Further validation of bonds of districts.—All actions and proceedings prior to April 1, 1957, had and taken and all elections held in any sanitary district in the State or in any district purporting to be a legal sanitary district by virtue of the purported authority and acts of any county board of commissioners or the State Board of Health or any other board, officer or agency for the purpose of authorizing, selling or issuing the bonds of any such sanitary district, and all such bonds at any time issued by or on behalf of any such sanitary district, are hereby in all respects legalized, ratified, approved, validated and confirmed, and all such bonds are hereby declared to be the legal and binding obligations of such sanitary district. (1953, c. 596, s. 3; 1957, c. 1357, s. 1.)

§ 130-155. Authorizing certain sanitary district boards to levy taxes.—The sanitary district board of any such sanitary district is hereby authorized to levy, or cause to be levied, annually a special tax ad valorem on all taxable property in such sanitary district for the special purpose of paying the principal of and interest on any such bonds, and such tax shall be sufficient for such purpose and shall be in addition to all other taxes which may be levied upon the taxable property in said sanitary district. (1945, c. 89, s. 3; 1957, c. 1357, s. 1.)

§ 130-156. Further validation of appointment or election of members of district boards.—All actions and proceedings prior to June 6, 1961, had and taken in the appointment or election of any members of any sanitary district board are hereby in all respects legalized, ratified, approved, validated and confirmed, and any and all members of any such board heretofore appointed or elected shall have all the powers and may perform all the duties required or permitted of them to be performed by this article until their respective successors are elected and qualified: Provided, however, that any vacancy in any sanitary district board may be filled as provided in G. S. 130-127. (1953, c. 596, s. 4; 1957, c. 1357, s. 1; 1961, c. 667, s. 2.)

Editor's Note.—The 1961 act, although not referring to this section, has been treated as an amendment hereof, because its language was identical with this section as it appeared in the 1957 act, except that the 1961 act substitutes "June 6, 1961" for "April 1, 1957."

Section 3½ of the 1961 act provides that nothing therein shall be construed to create, revive, or renew proceedings to create a sanitary district where a court of competent jurisdiction has ruled that such district was not legally or properly created.

§ 130-156.1. Additional validation of appointment or election of members of district boards.—All actions and proceedings prior to May 1, 1959, had and taken in the appointment or election of any members of any sanitary district board and the appointment or election of any such members are hereby in all respects legalized, ratified, approved, validated and confirmed, and any and all members of any such board heretofore appointed or elected shall have all the powers and may perform all the duties required or permitted of them to be performed pursuant to the provisions of this article, until their respective successors are elected and qualified; provided, however, that any vacancy in any sanitary district board may be filled as provided in G. S. 130-127. (1959, c. 415, s. 1.)

§ 130-156.2. Merger of district with contiguous city or town; election.—A

sanitary district created under the provisions of this article may merge with a contiguous city or town in the following manner:

- (1) The sanitary district board of commissioners and the governing board of the contiguous city or town may both resolve that it is advisable and feasible to call an election within both the sanitary district and said city or town to determine if the sanitary district and said contiguous city or town shall merge.
- (2) If the sanitary district board and the governing board of the contiguous city or town shall so resolve that it is advisable or expedient to call for such election, both boards shall adopt a resolution calling upon the board of county commissioners in the county or counties in which the district and the town or city or any portion thereof is located to call for an election on a date named by the sanitary district board and the governing board of the contiguous city or town, and request said board of commissioners to call to be held on the said date an election within the sanitary district and an election within the contiguous city or town on the proposition of merger of the sanitary district with the contiguous city or town.
- (3) If an election is called as provided in subdivision (2) above, the board of commissioners of such county shall provide ballots for such election in substantially the following form:

“FOR merger of the Town of and the Sanitary District, if a majority of the registered voters of both the Sanitary District and the Town vote in favor of merger, the combined territories to be known as the Town of and to assume all of the obligations of the Sanitary District and to receive from the Sanitary District all the property rights of the District; from and after merger residents of the District would enjoy all of the benefits of the municipality and would assume their proportionate share of the obligations of the Town as merged.”

“AGAINST merger.”
- (4) If at such election a majority of the registered voters of the sanitary district who shall vote thereon at such election shall vote in favor of the proposition submitted, and if a majority of the registered voters of the contiguous city or town who shall vote thereon at such election shall vote in favor of the proposition submitted, the sanitary district shall merge with the city or town on July 1 following said election. Should the majority of the registered voters of either the sanitary district or the contiguous city or town vote against the proposition, then the merger authorized under this statute shall not be effected. The sanitary district board and governing board of the contiguous city or town may, however, adopt resolutions and call for election on similar propositions of merger at any time not less than one year from the date of the last election thereon.
- (5) If the majority of the registered voters who shall vote at said election of both the sanitary district and the contiguous city or town vote in favor of said merger, and the merger becomes effective the following July 1, the city or town shall then assume all of the obligations of the sanitary district, and the sanitary district shall convey all property rights to the city or town, and a vote for such merger shall include a vote for the city or town to assume the obligations of the district. The sanitary district shall cease to exist as a political subdivision from and after the effective date of the merger. The residents of the sanitary district shall from and after July 1 following the said election enjoy all of the benefits of the municipality and shall after that date assume their share of the obligations of the city as merged with the sanitary

district. All taxes levied and collected by the city or town from and after the effective date of the merger shall be levied and collected uniformly in all of the territory embraced in the enlarged municipality.

- (6) If merger is approved, the governing board of the city or town shall determine the proportion of the district's indebtedness, if any, which was incurred for the construction of water systems and the proportion which was incurred for construction of sewage disposal systems. Upon making such determination, the governing board shall send a certified copy to the local government commission in order that said commission and the governing body of the merged municipality can determine the net debt of the merged municipality as required by G. S. 160-383.
- (7) The board of commissioners of the county in which said sanitary district and town or city is located may in their discretion conduct said election through the city board of elections or they may appoint such special election officials as in their discretion they may deem advisable, and may create such voting precincts as to them seems best to suit the convenience of the voters. The board of commissioners of the county in their discretion and on the recommendation of the board for the sanitary district and the contiguous city or town, either call for special registration in either or both the sanitary district and said city or town, or the board of commissioners may declare eligible to vote all those registered and eligible to vote in the city election for the contiguous city or town and those registered and eligible to vote in the general election within said sanitary district. The notice of the election shall be given by publication once a week for three successive weeks, the first to be at least thirty days before the election.
- (8) Opportunity shall be provided for new registration of qualified voters within the sanitary district and contiguous city or town and notice of such new registration shall be deemed to be sufficiently given if given at least thirty days before the close of the registration books by publication once in some newspaper published or circulated in said sanitary district and contiguous city or town. The notice of registration may be considered one of the three notices required of the election. Time of such registration shall as near as may be conform with that of the registration of voters in the municipal elections as provided in G. S. 160-37. The published notice of registration shall state the days on which the books shall be open for registration of voters and place or places at which they will open on Saturdays. The books of such new registration shall close on the second Saturday before the election. The Saturday before the election shall be challenge day, and except as otherwise provided in this article, such election shall be held in accordance with the law governing general elections. (1961, c. 866.)

ARTICLE 13.

Water and Sewer Sanitation.

§ 130-157. Sanitary engineering and sanitation units.—For the purpose of promoting a safe and healthful environment, and developing such corrective measures as may be required to minimize environmental health hazards, the State Board of Health shall maintain appropriate units of sanitary engineering and sanitation. The State Health Director shall employ such sanitary engineers, sanitarians, and other scientific personnel as are necessary to carry out the provisions of this article and to make such other sanitary engineering and sanitation investigations and inspections as are required of the State Board of Health by law, or by regulations of the State Board of Health. (1957, c. 1357, s. 1.)

§ 130-158. Persons supplying water to protect its purity.—In the interest of the public health, every person, company, or municipal corporation or agency thereof supplying water to the public for drinking and household purposes shall take every reasonable precaution to protect from contamination and assure the healthfulness of such water, and any provisions in any charters heretofore granted to such persons, companies, or municipal corporations in conflict with the provisions of this article are hereby repealed. (1899, c. 670, s. 1; 1903, c. 159, s. 1; Rev., s. 3058; 1911, c. 62, s. 24; C. S., s. 7116; 1957, c. 1357, s. 1.)

§ 130-159. Board of Health to control and examine waters; rules.—The State Board of Health shall have the general oversight and care of all inland waters to cause examination of said waters and their sources and surroundings to be made for the purpose of ascertaining whether the same are adapted for use as water supplies for drinking and other domestic purposes, or are in a condition likely to imperil the public health. The State Board of Health shall make reasonable rules and regulations governing the location, construction, and operation of public water and sewer facilities. Provided, that after the “effective date” applicable to any watershed as provided for in G. S. 143-215, any rules and regulations adopted by the State Board of Health under this section governing the location, construction, and operation of public sewerage facilities shall be effective only with respect to the administration of said Board’s responsibilities as set forth by G. S. 143-215.1 (a) (5). (1911, c. 62, s. 24; C. S., s. 7117; 1957, c. 1357, s. 1; 1959, c. 779, s. 9.)

Editor’s Note.—The 1959 amendment added the proviso.

§ 130-160. Sanitary sewage disposal; rules.—Any person owning or controlling any residence, place of business or place of public assembly shall provide a sanitary system of sewage disposal consisting of an approved privy, an approved septic tank, or a connection to a sewer system, under rules and regulation promulgated by the State Board of Health. (1957, c. 1357, s. 1.)

§ 130-161. Systems of water supply and sewerage; plans submitted.—The State Board of Health shall from time to time consult with and advise the boards of all State institutions, the authorities of cities and towns, and persons already having or intending to introduce systems of water supply, drainage, or sewerage, or intending to make major alterations to existing systems of water supply, drainage, or sewerage, as to the most appropriate source of supply, the best practical method of assuring the purity thereof, or of disposing of their drainage or sewerage, having regard to the present and prospective needs and interests of other cities, towns, and persons which may be affected thereby. All such boards of directors, authorities, and persons are hereby required to give notice to the State Board of Health of their intentions to introduce or alter a system of water supply, drainage or sewerage, and to submit to the Board such plans, surveys, and other information as may be required by rules and regulations promulgated by the State Board of Health. No such board of directors, authorities, or persons may enter into a contract for the introduction or alteration of a system of water supply, sewage disposal, or drainage until such plans and other information have been received, considered and approved by the State Board of Health. Provided, that prior to the “effective date” applicable to any watershed whenever the State Board of Health is advised by a municipality that application is being filed with the State Stream Sanitation Committee for a certificate of approval covering a voluntary pollution abatement project pursuant to G. S. 143-215.2, the plans will be reviewed by said Board if the effluent from the proposed works is to be discharged into waters used as a source of public water supply and if approved, said plans shall be referred to the State Stream Sanitation Committee for final approval. If no water supply is involved, such plans will be referred directly to the State Stream Sanitation Committee and the approval of the Board of Health will not be prerequisite to the entering

of a contract. Provided, further, that after the "effective date" applicable to any watershed as provided for in G. S. 143-215, the State Stream Sanitation Committee, rather than the State Board of Health, shall carry out the provisions of this section relating to sewage and waste disposal, except as otherwise provided by G. S. 143-215.1 (a) (5), with regard to:

- (1) Incorporated municipalities served by public sewerage systems;
- (2) Unincorporated communities served by a community sewerage system;
- (3) Sanitary districts created pursuant to law which are served by public sewerage systems;
- (4) Industries of all types, except raw milk dairies, farm slaughterhouses, shellfish processing plants and similar establishments; and those food and/or lodging establishments which are supervised by the State Board of Health under other State laws and which are not served by public or community sewerage systems;
- (5) Housing developments served by community sewerage systems; and
- (6) Military installations, parks, institutions, and other reservations which are maintained and operated by the federal government. (1911, c. 62, s. 24; C. S., s. 7118; 1957, c. 1357, s. 1; 1959, c. 779, s. 9.)

Editor's Note.—The 1959 amendment added the part of the section beginning with the first proviso.

§ 130-162. Condemnation of lands for water supply.—All municipalities operating water systems and sewerage systems, and all water companies operating under charter from the State or license from municipalities, which may maintain public water supplies, may acquire by condemnation such lands and rights in lands and water as are necessary for the successful operation and protection of their plants. Condemnation proceedings under this section shall be the same as prescribed by law under chapter 40 of the General Statutes of North Carolina. (1903, c. 159, s. 16; 1905, c. 287, s. 2; 1905, c. 544; Rev., s. 3060; 1911, c. 62, s. 25; C. S., s. 7119; 1957, c. 1357, s. 1.)

Power to Condemn Not Limited to Easement.—The power of a municipal corporation to condemn land for its watershed in order to protect from contamination its water supply is not limited to an easement, but it has been given power to condemn

the fee for that purpose, and the reference in § 40-19 to an easement relates to procedure and is not a limitation upon the power of the municipality. *Morganton v. Hutton & Bourbonnais Co.*, 251 N. C. 531, 112 S. E. (2d) 111 (1960).

§ 130-163. Sanitation of watersheds; rules.—The State Board of Health is hereby authorized, empowered and directed to adopt rules and regulations governing the sanitation of watersheds from which public domestic or drinking water supplies are obtained. In promulgating such regulations the Board is authorized to consider the different classes of watersheds, taking into account general topography, nature of watershed development, density of population, need for frequency of sampling of raw water, and particular needs for public health protection. The regulations shall govern the keeping of livestock, operation of recreational areas, maintenance of residences and places of business, disposal of sewage, establishment of cemeteries or burying grounds, and any other factors which would endanger the public water supply, provided, that regulations concerning the disposal of sewage shall not conflict with G. S. 130-161.

Any municipality or person furnishing water for domestic uses and human consumption, which secures its water from unfiltered surface supplies, shall have inspections made of the watershed area at least quarterly, and more often when, in the opinion of the State Board of Health, such inspections are necessary. (1899, c. 670; 1903, c. 159, s. 2; Rev., ss. 3045, 3046; 1911, c. 62, s. 28; 1919, c. 71, s. 14; C. S., s. 7121; Ex. Sess. 1921, c. 49, s. 1; 1957, c. 1357, s. 1; 1959, c. 779, s. 9.)

Editor's Note.—The 1959 amendment added the proviso at the end of the first paragraph.

§ 130-164. Defiling public water supply.—No person shall willfully defile, corrupt, or make impure any public or private water supply. No person shall willfully destroy or injure any pipe, conductor of water, or other property pertaining to an aqueduct. (1850, c. 104; R. C., c. 34, s. 97; Code, s. 1114; 1893, c. 214; 1903, c. 159, s. 12; Rev., ss. 3457, 3857; 1911, c. 62, s. 32; C. S., s. 7124; 1957, c. 1357, s. 1.)

§ 130-165. Discharge of sewage or industrial waste.—No person or municipality shall flow or discharge sewage or industrial waste above the intake into any source from which a public drinking water supply is taken, unless said sewage or industrial waste shall have been passed through some system of purification approved by the State Board of Health and State Stream Sanitation Committee: and the continued flow and discharge of such sewage may be enjoined. (1903, c. 159, s. 13; Rev., ss. 3051, 3858; 1911, c. 62, ss. 33, 34; C. S., s. 7125; 1957, c. 1357, s. 1; 1959, c. 779, s. 9.)

Editor's Note.—The 1959 amendment inserted the words "or industrial waste" and the words "and State Stream Sanitation Committee."

Constitutionality.—This section is not unconstitutional as to taking property without condemnation and without compensation, but is a valid exercise of the police power of the State to secure the public health. *Durham v. Eno Cotton Mills*, 141 N. C. 615, 54 S. E. 453 (1906); *Shelby v. Cleveland Mill, etc., Co.*, 155 N. C. 196, 71 S. E. 218 (1911); *North Carolina State Board v. Commissioners*, 173 N. C. 250, 91 S. E. 1019 (1917).

Sewage Defined.—The meaning of "sewage," under this section, is confined to the liquid and solid matter flowing from the water closets through the sewer and drain. *Durham v. Eno Cotton Mills*, 144 N. C. 705, 57 S. E. 465 (1907).

Dyestuff and fecal matter from privies, which were not passed through sewer to river from which water supply was received, do not come within the meaning of this section. *Durham v. Eno Cotton Mills*, 144 N. C. 705, 57 S. E. 465 (1907).

This section applies only when a public drinking-water supply is taken from the stream, in which instance proof of any injurious effect upon plaintiff's water supply is not required. *Banks v. Burnsville*, 228 N. C. 553, 46 S. E. (2d) 559 (1948).

In a suit by private individuals to restrain a municipality from emptying untreated sewage into a stream from which a public drinking-water supply is not taken, a complaint which fails to allege that plaintiff's own land lies along or adjacent to the stream and that the acts complained of constitute a nuisance resulting in continuing, irreparable damages, is demurrable. *Banks v. Burnsville*, 228 N. C. 553, 46 S. E. (2d) 559 (1948).

This section does not impose the mandatory duty upon the trial judge of enjoining a municipality from discharging raw sewage into a stream from which another municipality takes its water supply, and where the order prayed for would cause untold hardship upon the inhabitants of defendant municipality, the court's order denying the

injunctive relief but providing that the judgment should not prevent the bringing of another suit for the same relief upon a change in the fundamental conditions will be upheld on appeal. *Smithfield v. Raleigh*, 207 N. C. 597, 178 S. E. 114 (1935).

And Surrounding Facts Are to Be Considered.—The words "may be enjoined" as used in this section, clearly demonstrate that surrounding facts and circumstances must be considered in entering a peremptory order of injunctive relief. *Smithfield v. Raleigh*, 207 N. C. 597, 178 S. E. 114 (1935).

Proof of Injurious Effect Unnecessary.—An injunction will issue under this section against emptying sewage into a river, without proof of any injurious effect on plaintiff's water supply. *Durham v. Eno Cotton Mills*, 144 N. C. 705, 57 S. E. 465 (1907).

No Right by Prescription Acquired.—The unlawful emptying of untreated sewage into a stream without hindrance or question on the part of the health authorities or others, cannot confer upon a town the right to continue emptying therein contrary to the express provisions of the statutes, or acquire for it a prescriptive right as against the public, however long the same may have continued; nor can the town acquire a vested right therein to defeat the enforcement of the provisions of the statute subsequently passed. *North Carolina State Board v. Commissioners*, 173 N. C. 250, 91 S. E. 1019 (1917).

Nor can title be lost to the public by non-user, unless by legislative enactment. *Shelby v. Cleveland Mill, etc., Co.*, 155 N. C. 196, 71 S. E. 218 (1911).

No Special Treatment for Sewage Prescribed.—This section does not require that an arbitrary or fixed method of treating sewage before emptying into a stream, etc., should be established in advance, but that the defendant confer with the State Board of Health and obtain and follow the reasonable requirements prescribed for the conditions presented. *North Carolina State Board v. Commissioners*, 173 N. C. 250, 91 S. E. 1019 (1917).

Not Confined to Watershed Distance.—This section is not confined to the water-

shed of 15 miles above the intake, but extends beyond 15 miles from the intake of any stream from which water is taken to be supplied to the public for drinking purposes. *Durham v. Eno Cotton Mills*, 141 N. C. 615, 54 S. E. 453 (1906). In case of

menace to a lower town seventy-five miles below the place where the sewer empties, an injunction will be granted. *North Carolina State Board v. Commissioners*, 173 N. C. 250, 91 S. E. 1019 (1917).

§ 130-166. Sewage disposal on watersheds.—All schools, hamlets, villages, towns, or industrial settlements which are not provided with a sewer system, and which are now located or may be hereafter located on the watershed of any public water supply shall maintain and provide a reasonable system approved by the State Board of Health for collecting and disposing of all accumulations of human excrement within their respective jurisdiction or control. (1903, c. 159, s. 14; Rev., ss. 3052, 3860; 1907, c. 585; 1911, c. 62, s. 35; C. S., s. 7127; 1957, c. 1357, s. 1.)

When Injunction Granted.—An injunction will not be granted under this section except when it is shown that there are special damages, or that such conditions

existed as to render the water unfit for the usage to which it was applied. *Durham v. Eno Cotton Mills*, 144 N. C. 705, 57 S. E. 465 (1907).

ARTICLE 13A.

Sanitation of Agricultural Labor Camps.

§ 130-166.1. Definitions.—For the purpose of this article, the following definitions shall apply:

- (1) "*Agricultural labor camp or camps.*"—The term "agricultural labor camp or camps" means and includes one or more buildings or structures, tents, trailers, or vehicles, together with the land appertaining thereto, established, operated or used as living quarters for ten or more seasonal or temporary workers engaged in agricultural activities, including related food processing.
- (2) "*Camp operator.*"—The term "camp operator" means a person having charge or control of the camp housing for migrant agricultural workers.
- (3) "*Crew leader.*"—The term "crew leader" means the individual who handles the contract and is recognized by the group as the leader. (1963, c. 809, s. 1.)

Editor's Note.—The act inserting this article is effective as of Jan. 1, 1964.

§ 130-166.2. Permit required for operation of camp; posting.—No person shall operate directly or indirectly, an agricultural labor camp unless he has obtained a permit to operate such camp from the local health department having jurisdiction over the area in which the agricultural labor camp is located, and unless such permit is in full force and effect and is posted and is kept posted in the camp to which it applies at all times during the maintenance and operation of the camp. (1963, c. 809, s. 1.)

§ 130-166.3. Application for permit; issuance; duration; assignability; hearing on denial or revocation.—An application for a permit to operate an agricultural labor camp shall be made to the local health department having jurisdiction over the area in which the proposed agricultural labor camp is located, and shall be in writing and conform to the provisions of this article. The local health department to which the application is made shall issue, free of cost, a permit for the operation of the agricultural labor camp, if the health director of such department is satisfied, after investigation or inspection, that the camp meets the minimum standards prescribed by this article. Such permits shall be valid for a period of one (1) year, unless sooner revoked. Such permit shall not be transferable.

If an applicant for a permit to operate an agricultural labor camp is denied said permit, or if the holder of a permit has his permit revoked in accordance with the provisions of this article, the applicant or holder shall be entitled upon due request,

to a fair hearing before the local board of health having jurisdiction over the area in which the agricultural labor camp is located. (1963, c. 809, s. 1.)

§ 130-166.4. **Responsibility for sanitary standards and maintenance.**—The camp operator shall be responsible for complying with the provisions of this article concerning sanitation standards. The crew leader shall be responsible for maintaining the agricultural labor camp in a sanitary condition. (1963, c. 809, s. 1.)

§ 130-166.5. **Duties of camp employees and occupants.**—Every employee or occupant of a camp shall use the sanitary facilities provided and shall maintain in a sanitary manner that part of the housing or camp premises which he occupies. (1963, c. 809, s. 1.)

§ 130-166.6. **Cleanliness of camp area.**—The camp area shall be well drained and maintained in a clean, safe and sanitary manner. (1963, c. 809, s. 1.)

§ 130-166.7. **Water supply.**—An adequate, convenient, and safe water supply, approved by the State Board of Health, shall be available at all times at each camp. Water under pressure shall be provided, and water outlets shall be located not farther than 200 feet from each housing unit. The well or spring shall be constructed in accordance with the State Board of Health Bulletin #476, "Protection of Private Water Supplies." The supply shall be adequate to provide a minimum of 35 gallons per person per day. (1963, c. 809, s. 1.)

§ 130-166.8. **Sewerage facilities.**—Toilet facilities for each sex shall be provided in accordance with the provisions of G. S. 130-160. The minimum number of toilet seats shall be one for 20 users for each sex. Privies, when used, shall be located no farther than 200 feet from the dwelling units. (1963, c. 809, s. 1.)

§ 130-166.9. **Bathing facilities.**—Warm water (at least 90°) shall be made available for bathing facilities at each camp. In camps housing more than 15 workers, showers shall be provided on the ratio of one shower head for each 15 persons. Separate facilities shall be provided for each sex. (1963, c. 809, s. 1.)

§ 130-166.10. **Construction of buildings; minimum area of dormitories.**—In rooms for living and sleeping purposes, there shall be at least one window for each room opening to the outer air. The minimum total window area shall be ten per cent (10%) of the floor area for new buildings, and five per cent (5%) for existing buildings. All buildings shall be constructed in a safe manner with provisions against fire hazards and shall protect the occupants against the elements. The roof and walls shall be water resistant. In dormitory type construction, a minimum of 20 square feet per person shall be provided. (1963, c. 809, s. 1.)

§ 130-166.11. **Lighting; outlets.**—Every camp operator shall provide for artificial illumination in a safe and adequate manner. At least one outlet shall be provided for each housing unit used for sleeping or cooking purposes. (1963, c. 809, s. 1.)

§ 130-166.12. **Sanitary food facilities.**—Where central feeding facilities are provided, and operated for pay, they shall be operated in accordance with the requirements of the State Board of Health for food handling establishments. (1963, c. 809, s. 1.)

§ 130-166.13. **Garbage and refuse disposal.**—Water-tight receptacles shall be provided for storage of garbage and refuse. Containers must be emptied daily and the contents buried or disposed of in a sanitary manner. (1963, c. 809, s. 1.)

§ 130-166.14. **Enforcement by Board of Health.**—The responsibility for the enforcement of this article shall rest upon the North Carolina State Board of Health or its duly authorized representative. (1963, c. 809, s. 2.)

§ 130-166.15. **Posting provisions of article.**—The State Board of Health shall cause the provisions of this article to be prominently displayed on the premises of each agricultural labor camp. (1963, c. 809, s. 2A.)

ARTICLE 14.

Meat Markets and Abattoirs.

§ 130-167. **Regulation of places selling meat.**—For the better protection of the public health, the State Board of Health is hereby authorized, empowered, and directed to prepare rules and regulations governing the sanitation of meat markets, abattoirs, poultry processing plants, and other places where meat, meat products, or poultry products are prepared, handled, stored, or sold, and to provide a system of scoring and grading such places. No meat market, abattoir, or poultry processing plant which fails to meet minimum standards prescribed by said rules and regulations shall operate; provided, that this article shall not apply to persons who raise and butcher for their own use and marketing meat, meat products, or poultry products; provided further that this article shall not restrict the State Board of Agriculture in making rules and regulations governing the sanitation of meat plants, abattoirs, and poultry dressing or processing plants when a system of mandatory or voluntary meat, meat products, or poultry inspection is carried on in such plants by the North Carolina Department of Agriculture as provided by law. (1937, c. 244, s. 1; 1957, c. 1357, s. 1.)

§ 130-168. **Inspection reports to be filed with local health director.**—Where municipalities or counties have a system of meat or poultry inspection as provided by law, the person responsible for such inspection work shall file a copy of all inspection work, reports, and other official data with the local health director. (1937, c. 244, s. 2; 1957, c. 1357, s. 1.)

§ 130-169. **Effect of article.**—The provisions of this article shall be considered as additional to and not in conflict with authority granted the State Board of Agriculture and the Commissioner of Agriculture in §§ 106-159 to 106-166 of the General Statutes providing for the inspection of meat and meat products plants and the inspection of meat and meat products and in §§ 106-549.1 to 106-549.14 of the General Statutes providing for the voluntary inspection of poultry and poultry products. (1937, c. 244, s. 4; 1957, c. 1357, s. 1.)

ARTICLE 14A.

Swimming Pools.

§ 130-169.1. **Definitions.**—For the purpose of this article the following definitions shall apply:

- (1) "Person": Any individual, firm, partnership, cooperative organization, corporation, municipality, any other political subdivision or other organized entity.
- (2) "Public swimming pool": Any swimming pool, other than a residential swimming pool, intended to be used collectively by numbers of persons for swimming or bathing, operated by any person as defined herein, whether he be owner, lessee, operator, licensee, or concessionaire, regardless of whether or not a fee is charged for such use.
- (3) "Residential swimming pool": Any swimming pool located on private property under the control of the home owner; the use of which is limited to swimming or bathing by members of his family or their invited guests.
- (4) "Swimming pool": Any structure, basin, chamber, or tank containing an

artificial body of water for swimming, diving, or recreational bathing. (1963, c. 397.)

Editor's Note.—The act inserting this article is effective as of Jan. 1, 1964.

§ 130-169.2. **State Board of Health to prepare minimum standards.**—For the protection of the public health and safety, the State Board of Health is hereby authorized, empowered and directed to prepare minimum standards regarding the design, construction, maintenance and operation of public swimming pools. These standards shall include and be restricted to such items as water supply, sewer and waste connections, bathing load, recirculation equipment, piping and appurtenances, filtration equipment, disinfection and chemical feed equipment, bathhouse, showers and toilet facilities, safety operation equipment, and water quality and operation of such sanitation equipment. (1963, c. 397.)

§ 130-169.3. **Minimum standards to be made available to local governmental units; adoption by reference.**—The minimum standards established by the State Board of Health are to be made available to local governmental units as a recommended guide in the development of local ordinances governing the design, construction, and maintenance of public swimming pools and may be adopted by reference by the local governmental units as the standards of the local governmental unit. (1963, c. 397.)

§ 130-169.4. **Local ordinances and regulations.**—Local governmental agencies with authority to enact ordinances or regulations for the protection of the public health are authorized to adopt and enforce ordinances governing the design, construction, and maintenance of public swimming pools using the minimum standards adopted by the State Board of Health under authority of G. S. 130-169.2 as their standards guide. (1963, c. 397.)

§ 130-169.5. **Lakes, ponds, streams, etc.**—The standards provided by this article shall not apply to lakes, ponds, streams and other natural places used for swimming; the approval or acceptance of such places as not being dangerous to the public health is to be based on the results of a sanitary survey and the bacteriological quality of the water. (1963, c. 397.)

§ 130-169.6. **Residential swimming pools exempted.**—The provisions of this article shall not apply to residential swimming pools. (1963, c. 397.)

ARTICLE 15.

Private Hospitals and Educational Institutions.

§ 130-170. **Regulation of sanitation by State Board of Health.**—To safeguard the health of patients, residents, and students of private hospitals, nursing and convalescent abodes, sanitariums, sanatoriums and educational or other institutions in North Carolina, the State Board of Health is hereby authorized and empowered to make rules and regulations governing the sanitation of all such establishments and to provide a system of grading applicable thereto. For the purposes of this article the word "private" shall refer to all institutions other than those operated exclusively by the State of North Carolina. The "non-private" institutions are subject to sanitation inspections under the provisions of subdivision (10) of G. S. 130-11.

If any of the above-named establishments fails to meet the minimum standards set by the State Board of Health, a reasonable time shall be given by the State Board of Health in which to make the alterations necessary to meet those minimum standards. In cases where the public health or the health of the inmates will be threatened by continued operation of an institution which does not meet the minimum standards, the State Board of Health may apply to the superior court for

injunctive relief pursuant to the provisions of G. S. 130-205. (1945, c. 829, s. 1; 1957, c. 1357, s. 1.)

ARTICLE 16.

Regulation of the Manufacture of Bedding.

§ 130-171. Definitions.—In addition to the definitions set out in article one of this chapter, as used in this article, or on the tags required by this article:

The word “bedding” means: Any mattress, upholstered spring, quilt, comforter, pad of a thickness of more than one inch, cushion or pillow used principally for sleeping, or like item of a thickness of more than one inch used principally for sleeping. Dual purpose furniture such as sofa beds and studio couches shall be included within this definition.

The terms “cotton,” “virgin cotton” and “staple cotton” means: The staple fibrous growth as removed from cottonseed in the usual process of ginning.

The term “cotton by-products” means: Any by-products removed from cotton by the various machine operations necessary in the manufacture of cotton yarn.

The term “cotton linters” means: The fibrous growth removed from cotton-seed subsequent to the usual process of ginning.

The word “felt” means: Material that has been carded in layers by a garnett machine and is inserted into the bedding in layers.

The term “itinerant bedding vendor” means: Any person who sells bedding from a movable conveyance.

The word “manufacture” means: Any making or remaking of bedding out of new or previously used materials, except for the maker’s own personal use or the use of his immediate family, other than renovating.

The term “new material” means: Any material or article that has not been used in the manufacture of another article or used for any other purpose: Provided this shall not exclude by-products of industry that have not been in human use, unless otherwise excluded in this article.

The term “previously used material” means:

- (1) Any material which has been used in the manufacture of another article or used for any other purpose,
- (2) Any material made into thread, yarn, or fabric, and subsequently torn, shredded, picked apart, or otherwise disintegrated, including jute.

The word “renovate” means: The reworking or remaking of used bedding and returning it to the owner for his personal use or the use of his immediate family.

The word “sanitize” means: Treatment of bedding or materials to be used in bedding for the destruction of pathogenic microorganisms and arthropods and the removal of dirt and filth.

The term “secondhand bedding” means: Any bedding of which prior use has been made.

The word “sell” or “sold” shall, in the corresponding tense, include: Sell, have to sell, give away in connection with a sale, delivery or consign in sale, or rent; or, possess with intent to sell, deliver, consign in sale, or rent. (1937, c. 298, s. 1; 1957, c. 1357, s. 1; 1959, c. 619.)

Editor’s Note.—The 1959 amendment inserted “quilt” in the first line of the second paragraph.

§ 130-172. Sanitizing.—No person shall renovate any mattress without first sanitizing it in accordance with rules and regulations adopted by the State Board of Health.

Any sanitizing apparatus or process used under this article must conform to rules and regulations adopted by the State Board of Health, and shall be inspected and approved by a representative of the State Board of Health according to the rules and regulations of the State Board of Health. If, in the opinion of such representa-

tives, the apparatus or process does not meet the standards established by said rules and regulations, such apparatus or process may be condemned by the representative of the State Board of Health, in which event such apparatus or process shall not be used for sanitizing any bedding or material required to be sanitized under this article until the defects have been remedied and the apparatus or process complies with the rules and regulations of the State Board of Health.

Any person sanitizing bedding must attach to said bedding a yellow tag containing such information as the State Board of Health may require, and affix thereto the adhesive stamp prescribed by G. S. 130-177.

Any person sanitizing material or bedding for another person shall keep a complete record of the kind of material and bedding so sanitized, such record to be open to inspection by any representative of the State Board of Health.

Any person who receives bedding for renovation or storage shall keep attached thereto, from the time received, a tag on which is legibly written the date of receipt and the name and address of the owner. (1937, c. 298, s. 2; 1957, c. 1357, s. 1.)

Editor's Note.—This statute escapes the condemnation which befell the Pennsylvania statute in *Weaver v. Palmer Bros. Co.*, 270 U. S. 402, 46 S. Ct. 320, 70 L. Ed. 654 (1926). In fact, the opinion in that case indicates that sterilization is the proper way to regulate the manufacture of bedding and mattresses from secondhand material. 15 N. C. Law Rev. 328.

§ 130-173. Manufacture regulated.—No person shall manufacture in this State any bedding containing previously used materials without first sanitizing the previously used materials in accordance with rules and regulations adopted by the State Board of Health.

No manufacturing establishment shall store any unsanitized previously used materials in the same room with bedding or materials that are new or have been sanitized unless the new or sanitized bedding or materials are completely segregated from the unsanitized materials in a manner approved by regulations of the State Board of Health.

All materials used in the manufacture of bedding in this State shall be reasonably clean and free from other trash, oil, grease, or other extraneous matter. No material known as "sweeps" or "oily sweeps" may be used unless washed by a process approved by the State Health Director.

No person shall manufacture any bedding to which is not securely sewed a tag of durable material approved by the State Board of Health, which tag shall be at least two inches by three inches in size, and to which is affixed the adhesive stamp provided for in G. S. 130-177. Such stamp shall be so affixed as not to interfere with the wording on the tag.

Upon said tag shall be plainly stamped or printed with ink in English:

- (1) The name and kind of material or materials (as defined by this article or by the regulations of the State Board of Health) used to fill such bedding;
- (2) The name and address of the maker or vendor of the bedding;
- (3) A registration number designated by the State Health Director;
- (4) In letters at least one-eighth inch high the words "made of new material", if such bedding contains no previously used material; or the words "made of previously used materials", if such bedding contains any previously used material; or the word "secondhand" on any bedding which has been used but not remade.

A white tag shall be used for new materials and a yellow tag for previously used materials or secondhand bedding.

Nothing false or misleading shall appear on said tag, and it shall contain all statements and the adhesive stamp required by this article, and shall be sewed to the outside covering of every piece of bedding being manufactured. Except in the case of dual purpose furniture, said tag must be sewed to the outside covering before the filling material has been inserted. No trade name or advertisement will be

permitted on said tag. (1937, c. 298, s. 3; 1951, c. 929, s. 2; 1957, c. 1357, s. 1; 1959, c. 619.)

Editor's Note.—The 1959 amendment deleted the words "except as otherwise provided in this article" formerly appearing after "which" near the beginning of the fourth paragraph.

§ 130-174. Altering, etc., tags prohibited.—No person, other than one purchasing bedding for his own use, or a representative of the State Board of Health, shall remove, deface, or alter the tag required by this article. (1937, c. 298, s. 4; 1957, c. 1357, s. 1.)

§ 130-175. Selling regulated.—No person shall sell any bedding in this State (whether manufactured within or without this State) which has not been manufactured, tagged, labeled, and stamped in the manner required by this article, and which does not otherwise comply with the provisions of this article.

No person shall sell any secondhand bedding or bedding containing any previously used material unless sanitized, since last used, in accordance with rules and regulations adopted by the State Board of Health: Provided, this article shall not apply to a mattress sold by the owner and previous user from his home directly to a purchaser for his own personal use unless such mattress has been exposed to an infectious or contagious disease.

Possession of any item covered by this article in any store, warehouse, itinerant vendor's conveyance, or place of business, other than a private home, hotel, or other place where such articles are ordinarily used, shall constitute prima facie evidence that the item so possessed is possessed with intent to sell. No secondhand bedding shall be so possessed for a period exceeding 60 days until sanitized. (1957, c. 1357, s. 1.)

§ 130-176. Registration numbers, licenses.—All persons manufacturing or sanitizing bedding in North Carolina, or manufacturing bedding to be sold in North Carolina, shall make an application, in such form as the State Health Director shall prescribe, for a registration number. Upon receipt of such application, the State Board of Health shall issue to the applicant a certificate of registration showing such person's name and address, registration number, and such other pertinent information as the State Board of Health may require.

For the purpose of defraying expenses incurred in the enforcement of the provisions of this article, the following license fees are to be paid to the State Board of Health, deposited in the "bedding law fund," and expended in accordance with the provisions of G. S. 130-177. No person shall sanitize any bedding, as required by this article, unless he is exempted by other provisions of this article, until he has secured a "sanitizer's license" from the State Board of Health upon the payment of twenty-five dollars (\$25.00) for each calendar year. No person shall manufacture any bedding in this State, unless he is exempted by other provisions of this article, until he has secured a "manufacturer's license" from the State Board of Health upon the payment of twenty-five dollars (\$25.00) for each calendar year.

The regular license period shall be from January 1 to December 31 of each year. However, any license bought after July 1 of any year shall be valid for the remaining part of that calendar year and shall be furnished at half the regular license fee. If any establishment owned by the holder of any such license or licenses should be sold, the license or licenses may be transferred with the business, such transfer to be accomplished under rules prescribed by the State Board of Health.

All licenses required by this article shall, at all times, be kept conspicuously posted in the place of business of the licensee.

The State Health Director may revoke and void any of the aforesaid licenses of any person convicted twice within a twelve months' period for violating this article; provided, that the State Board of Health shall have authority, after 30 days from the date of revocation, to reinstate any revoked license upon the payment of the

required fees. (1937, c. 298, s. 7; 1951, c. 929, s. 1; 1957, c. 1357, s. 1; 1959, c. 619.)

Editor's Note.—The 1959 amendment substituted "this article" for "G. S. 130-172" near the beginning of the second sentence of the second paragraph.

§ 130-177. Enforcement funds.—The State Board of Health is hereby charged with the administration and enforcement of this article, and the Board shall provide specially designated adhesive stamps for use under the provisions of this article. Upon request the Board shall furnish no less than five hundred such stamps to any person paying in advance eight dollars (\$8.00) per five hundred stamps.

Any person who manufactures bedding in North Carolina or any person who manufactures bedding to be sold in North Carolina may, in lieu of purchasing and affixing the adhesive stamps provided for by this article, annually secure from the State Board of Health a "stamp exemption permit" upon compliance with the provisions of this section and the rules and regulations of the State Board of Health. The holder of a stamp exemption permit shall not be required to purchase or affix adhesive stamps to bedding manufactured or sold in North Carolina. The cost of a stamp exemption permit is to be determined annually by the total number of bedding items manufactured or sold in North Carolina by the applicant during the calendar year immediately preceding the issuance of the permit, at the rate of eight dollars (\$8.00) for each five hundred (500) pieces of bedding or fraction thereof. A maximum charge of four hundred dollars (\$400.00) shall be made for pieces of bedding manufactured in North Carolina but not sold in North Carolina.

Applications for stamp exemption permits must be submitted in such form as the State Board of Health shall prescribe. No stamp exemption permit may be issued to any person unless he has done business in North Carolina throughout the preceding calendar year in compliance with the provisions of this article, and unless he complies with the rules and regulations of the State Board of Health governing the granting of stamp exemption permits.

The State Board of Health is hereby authorized and directed to prepare rules and regulations for the proper enforcement of this section. The rules and regulations shall include provisions governing the type and amount of proof which must be submitted by the applicant to the State Board of Health in order to establish the number of bedding items that were, during the preceding calendar year:

- (1) Manufactured in North Carolina and sold in North Carolina;
- (2) Manufactured outside of North Carolina and sold in North Carolina; and
- (3) Manufactured in North Carolina but not sold in North Carolina.

Because of the greater difficulty involved in auditing the records of out-of-State manufacturers, the State Board of Health is authorized to require a greater amount of proof from out-of-State manufacturers than from in-State manufacturers. The State Board of Health may provide in its regulations for additional proof of the number of bedding items sold during the preceding calendar year when it has reason to believe that the proof submitted by the manufacturer (whether in-State or out-of-State) is incomplete, misleading, or incorrect.

All money collected under this article shall be paid to the State Health Director, who shall place all such money in a special "bedding law fund", which is hereby created and specifically appropriated to the State Board of Health, solely for expenses in furtherance of the enforcement of this article. The State Health Director shall semiannually render to the State Auditor a true statement of all receipts and disbursements under said fund, and the State Auditor shall furnish a true copy of said statement to any person requesting it.

All money in the "bedding law fund" shall be expended solely for:

- (1) Salaries and expenses of inspectors and other employees who devote their time to the enforcement of this article, or
- (2) Expenses directly connected with the enforcement of this article, including

attorney's fees, which are expressly authorized to be incurred by the State Health Director without authority from any other source when in his opinion it is advisable to employ an attorney to prosecute any persons: Provided, however, that a sum not exceeding twenty per cent (20%) of such salaries and expenses above enumerated may be used for supervision and general expenses of the State Board of Health. (1937, c. 298, s. 5; 1949, c. 636; 1957, c. 1357, s. 1.)

§ 130-178. Enforcement by State Board of Health.—The State Board of Health, through its duly authorized representatives, is hereby authorized and empowered to enforce the provisions of this article. Any person who shall hinder any representative of the State Board of Health in the performance of his duty under the provisions of this article shall be guilty of a violation of this article.

Every place where bedding is made, remade, renovated, or sold, or where material which is to be used in the manufacture of bedding is mixed, worked, or stored, shall be inspected by duly authorized representatives of the State Board of Health.

Any representative of the State Board of Health may order off sale, and so tag, any bedding which is not made, sanitized, tagged, or stamped as required by this article, or which is tagged with a tag containing a statement false or misleading, and such bedding shall not be sold or otherwise removed except with the consent of a representative of the State Board of Health, until such defect is remedied and a representative of the State Board of Health has reinspected same and removed the "off-sale" tag.

Any person supplying material to a bedding manufacturer shall furnish therewith an itemized invoice of all material so furnished. Each material entering into willowed or other mixtures shall be shown on such invoice. The bedding manufacturer shall keep such invoice on file for one year subject to inspection by any representative of the State Board of Health.

When an authorized representative of the State Board of Health has reason to believe that bedding is not tagged or filled as required by this article, he shall have authority to open a seam of such bedding to examine the filling; and if unable after such examination to determine if the filling is of the kind stated on the tag, he shall have the power to examine any purchase or other records necessary to determine definitely the kind of material used in such bedding, and he shall have power to seize and hold for evidence any such records and any bedding or bedding material which in his opinion is made, possessed or offered for sale contrary to this article, and shall have power to take a sample of any bedding or bedding material for the purpose of examination or for evidence. (1937, c. 298, s. 6; 1957, c. 1357, s. 1.)

§ 130-179. Exemptions for blind persons and State institutions.—In the cases where bedding is manufactured, sanitized, or renovated in a plant or place of business owned or operated by blind persons in which place of business not more than one sewing assistant who is not blind is employed in the manufacture or renovation of mattresses, the bedding shall be inspected pursuant to this article, but it shall not be required that stamps be affixed or that a license tax be paid, and bedding made by such blind persons may be sold by any dealer without the stamps being affixed.

State institutions engaged in the manufacture, renovation, or sanitation of bedding for their own use or that of another State institution are exempted from all provisions of this article. (1937, c. 298, s. 11; 1957, c. 1357, s. 1.)

ARTICLE 17.

Cancer Control Program.

§ 130-180. State Board of Health to administer program, rules.—The State Board of Health shall administer a program for the prevention and treatment of cancer to the extent specified in this article and the State Board of Health is

authorized to promulgate rules and regulations to carry out such program. (1945, c. 1050, s. 1; 1957, c. 1357, s.1.)

§ 130-181. Financial aid for diagnosis, hospitalization and treatment.—The State Board of Health shall furnish to indigent citizens of North Carolina having or suspected of having cancer, and who comply with the rules and regulations specified by the State Board of Health, financial aid for diagnosis, hospitalization, and treatment, and the State Board of Health may furnish to all citizens facilities for diagnosis of cancer. Such diagnosis, hospitalization, and treatment shall be given said patients in any hospital in this State which meets the minimum requirements for cancer control established by the State Board of Health. In order to administer such financial aid in the manner which will afford the greatest benefit to said persons, the State Board of Health is hereby authorized to promulgate rules and regulations specifying the terms and conditions upon which the patients may receive such financial aid, and act upon such applications in the manner which will best effectuate the purposes of this article. The State Board of Health may develop with the State Board of Public Welfare procedures for determining the needs of indigent and other low-income applicants for financial aid in carrying out the purposes of this article. (1945, c. 1050, s. 2; 1957, c. 1357, s. 1.)

§ 130-182. Cancer clinics.—The State Board of Health is authorized to establish and designate minimum standards and requirements for the organization, equipment and conduct of State-sponsored cancer clinics or departments in hospitals or health departments in this State to the end that said hospitals or health departments may intelligently prepare and adequately equip their institutions to diagnose, prevent and treat cancer. (1945, c. 1050, s. 3; 1949, c. 1071; 1957, c. 1357, s. 1.)

§ 130-183. Tabulation of records.—The State Board of Health shall compile, tabulate and preserve statistical, clinical, and other records relating to the prevention and cure of cancer. The clinical records of individual patients shall be considered confidential matter and shall not be open to inspection, except as provided by this chapter and the regulations of the State Board of Health. (1945, c. 1050, s. 7; 1957, c. 1357, s. 1.)

§ 130-184. Reporting of cancer.—It shall be the duty of every physician to notify the local health director of the name, address and such other items as may be specified by the State Board of Health, of any person by whom such physician is consulted professionally and who is found to have cancer of any type. The report shall be made within five days after the diagnosis of cancer is established, or within five days after obtaining reasonable evidence for believing that such person is so afflicted. The forms used for reporting shall be prepared and supplied by the State Board of Health. The local health director shall forward to the State Board of Health all report cards within five days of their receipt from the physician. (1949, c. 499; 1957, c. 1357, s. 1.)

§ 130-184.1. Reporting of cancer by pathologists.—It shall be the duty of every pathologist diagnosing any case of any type of cancer (malignant neoplasm) to report the same to the Central Office of Vital Statistics of the State Board of Health. Such reports shall be made within five (5) days of the time such diagnosis of cancer is established on forms prescribed and furnished by the Central Office of Vital Statistics of the State Board of Health, and shall contain such items of information as may be specified by the State Board of Health. (1963, c. 254.)

Editor's Note.—The act from which this section was codified became effective July 1, 1963.

§ 130-185. Assistance to hospitals and physicians.—The State Board of Health shall assist hospitals and local health departments in the State in organizing and conducting cancer clinics as a part of the cancer control program, and shall assist

physicians and hospitals and local health departments in establishing the early diagnosis of cancer and in preparing themselves to render the most efficient service in the cancer control program. (1945, c. 1050, s. 8; 1957, c. 1357, s. 1.)

§ 130-186. **Cancer committee of North Carolina Medical Society.**—In formulating the plans and policies of the program for the prevention and cure of cancer, the State Board of Health shall consult with the cancer committee of the North Carolina Medical Society, which shall consist of one physician from each congressional district, to the end that the cancer control program shall most effectively serve the welfare of the people of the State, and such plans and policies shall be presented to and approved by said cancer committee. (1945, c. 1050, s. 9; 1957, c. 1357, s. 1.)

ARTICLE 18.

Midwives.

§ 130-187. **Regulation of midwives.**—No person shall practice midwifery in this State without a permit granted by the State Board of Health or a local board of health, under rules and regulations adopted by the State Board of Health or local board of health. The State Board of Health and the local boards of health are authorized to promulgate rules and regulations governing the practice of midwifery. (1957, c. 1357, s. 1.)

ARTICLE 19.

Loan Fund for Dental Students.

§ 130-188. **State Board of Health.**—The State Board of Health is hereby authorized to establish a loan fund to be known as "The Little Jack Loan Fund" for junior and senior dental students by setting aside an amount, not to exceed twenty-two thousand, five hundred dollars (\$22,500.00), for such purpose from the special dental fund. (1953, c. 916, s. 1; 1957, c. 1357, s. 1.)

§ 130-189. **Conditions under which loans to be made.**—Loans are to be made upon agreement that the recipient will, upon graduation from dental school and the securing of license to practice dentistry in North Carolina, join the staff of the Division of Oral Hygiene of the North Carolina State Board of Health, and repay said Board of Health each month, from salary received, an amount to be agreed upon by the loan committee and the recipient, until said loan is paid in full. The loan is to be secured by approved notes, without interest. Should said borrower-employer relationship be severed, for any cause, the unpaid balance of the loan will become due immediately. (1953, c. 916, s. 2; 1957, c. 1357, s. 1.)

§ 130-190. **Administration and custody of loan fund; selection of recipients; loans to minors.**—Administration of the loan fund and selection of recipients are to be directed by a loan committee to be composed of the State Health Director, the dental member of the State Board of Health and the Director of the Division of Oral Hygiene. The budget officer of the State Board of Health is to be the custodian of the loan fund and will issue checks and receive payments of loans. The loan committee herein established shall have the power and authority to formulate and negotiate all contracts involved in making loans under this article. It shall have the power and authority to impose such reasonable contractual conditions as may be necessary to safeguard the fund herein established and shall fix all conditions as to amounts, length of time loans shall run, conditions of repayment and any and all things necessary to carry out the intent and purpose of this article. The fact that a junior or a senior dental student is under twenty-one years of age shall not invalidate any obligation signed by such junior or senior dental student under the provisions of this article and all such contracts, notes, agreements and other papers

and documents signed by any junior or senior dental student under twenty-one years of age shall be legal, valid, binding and enforceable to the same extent as if said junior or senior dental student had already attained the age of twenty-one years or more. (1953, c. 916, s. 3; 1957, c. 1357, s. 1.)

ARTICLE 20.

Surgical Operations on Inmates of State Institutions.

§ 130-191. Procedure when surgical operations on inmates are necessary.—The medical staff of any penal or charitable hospital or institution of the State of North Carolina is hereby authorized to perform or cause to be performed by competent and skillful surgeons surgical operations upon any inmate when such operation is necessary for the improvement of the mental or physical condition of the inmate. The decision to perform such operation shall be made by the chief medical officer of the institution, with the approval of the superintendent of the institution, and with the advice of the medical staff of said institution. No such operation shall be performed without the consent of the inmate; or, if the inmate be a minor, without the consent of a responsible member of his family, a guardian, or one having legal custody of such minor; or, if the inmate be non compos mentis, then the consent of a responsible member of his family or of a guardian must be obtained. In any event in which a responsible member of the inmate's family, or a guardian for such inmate, cannot be found, as evidence by the return of a registered letter to the last known address of the guardian or responsible relative, then the local health director of the area in which the hospital or institution is located shall be authorized to give or withhold, on behalf of the inmate, consent to the operation.

If the operation on the inmate is determined by the chief medical officer to be an emergency situation in which immediate action is necessary to preserve the life or health of the inmate, and the inmate, if sui juris, is unconscious or otherwise incapacitated so as to be incapable of giving consent or in the case of a minor or inmate non compos mentis, the consent of a responsible member of his family, guardian, or one having legal custody of such inmate cannot be obtained within the time necessitated by the nature of the emergency situation, then the decision to proceed with the operation shall be made by the chief medical officer and the superintendent of the institution with the advice of the medical staff of the institution.

In all cases falling under this article, the chief medical officer of the institution and the medical staff of the institution shall keep a careful and complete record of the measures taken to obtain the permission for such operation and a complete medical record signed by the medical superintendent or director, the surgeon performing the operation and all surgical consultants of the operation performed.

This article is not to be considered as affecting the provisions of article 7 of chapter 35 of the General Statutes dealing with eugenical sterilization. (1919, c. 281, ss. 1, 2; C. S., ss. 7221, 7222; 1947, c. 537, s. 24; 1951, c. 775; 1957, c. 1357, s. 1.)

ARTICLE 20A.

Treatment of Self-Inflicted Injuries upon Prisoners.

§ 130-191.1. Procedure when consent is refused by prisoner.—When a board comprised of the Director of Prisons, the chief medical officer of a prison hospital or penal institution, and a representative of the State or county welfare department of the county where the prisoner is confined, shall convene and find as a fact that the injury to any prisoner was wilfully and intentionally self-inflicted and that an operation or treatment is necessary for the preservation or restoration of the health of the prisoner and that the prisoner is competent to act for himself or herself; and that attempts have been made to obtain consent for the proposed operation or treatment but such consent was refused, and the findings made by this board have been reduced to writing and entered into the prisoner's records as a permanent part

thereof, then the local health director, as defined by G. S. 130-3, or in the event a local health director is not immediately available then the local health director of any adjoining or nearby area, shall be authorized to give or withhold, on behalf of the prisoner, consent to the operation or treatment.

In all cases coming under the provisions of this article, the medical staff of the hospital or institution shall keep a careful and complete medical record of the treatment and surgical procedures undertaken. The record shall be signed by the chief medical officer of the hospital or institution and the surgeon performing any surgery. (1959, c. 1196.)

Cross Reference.—As to punishment of self-injury resulting in incapacity to perform assigned duties, see § 148-46.1.

ARTICLE 21.

Post-Mortem Medicolegal Examinations.

§ 130-192. Committee created.—For the purpose of administering this article, there is hereby created within the State Board of Health a committee to be known as the Committee on Post-Mortem Medicolegal Examinations, which committee shall consist of seven persons, six of which shall be ex officio members designated by notification in writing to the Governor as follows:

- (1) The State Health Director.
- (2) The Attorney General, or a member of his staff designated by him.
- (3) The Director of the State Bureau of Investigation or a member of his staff designated by him.
- (4) The head of the Department of Pathology of the Medical School of the University of North Carolina or his representative from said Department designated by such departmental head.
- (5) The head of the Department of Pathology of the Bowman Gray School of Medicine of Wake Forest College or his representative from said Department designated by such departmental head.
- (6) The head of the Department of Pathology of the School of Medicine of Duke University or his representative from said Department designated by such departmental head.
- (7) One member shall be a layman appointed by the Governor.

The State Health Director shall be the chairman of the committee.

Regular meetings shall be held at such times as may be determined by the committee, and special meetings may be called at any convenient time and place upon reasonable notice signed by any three members.

Four members shall constitute a quorum for the transaction of any business coming before the committee.

The ex officio members shall have all the privileges, rights, powers and duties of the appointed member and shall serve on the committee during the tenure of their respective offices or that of the officer they represent. The member appointed by the Governor shall serve for a period of four years. (1955, c. 972, s. 1; 1957, c. 1357, s. 1.)

§ 130-193. Powers and duties of the committee.—The committee shall have power subject to the approval of the State Board of Health:

- (1) To make, amend, repeal, and promulgate necessary rules and regulations for its own government and procedure and for the performance of its duties under this article, including the power to allocate the expenses of performing autopsies and to impose and allocate the expenses of performing toxicological studies.
- (2) To accept grants, contributions, gifts, devises and bequests which may be used for purposes not inconsistent with the said grants, gifts, contributions, devises and bequests and for any other purposes as deemed necessary by the committee.

- (3) To authorize the chairman of the committee and his employees to cooperate with all educational institutions and law enforcement agencies of the State for the purpose of furthering medicolegal education and training.
- (4) To establish and maintain a toxicological laboratory under the supervision of the State Board of Health or if the committee deems it advisable so to do, contract with other technical personnel or for the use of technical facilities for the purpose of providing toxicologic service. (1955, c. 972, s. 1; 1957, c. 1357, s. 1.)

§ 130-194. Powers and duties of the chairman of the committee.—It shall be the duty of the chairman of the committee to attend the meetings of the committee, to keep a record of such meetings, to attend to the official correspondence of the committee, to act as custodian of the files and records of the committee, to receive reports directed to the committee, to cause to be performed and to supervise and control medicolegal post-mortem examinations, to furnish pertinent information and reports relating to such investigations as directed by the committee, and to perform all other duties delegated to him by the committee. (1955, c. 972, s. 1; 1957, c. 1357, s. 1.)

§ 130-195. Assistants and employees, salaries and expenses.—(a) The chairman of the committee may, with the approval of the committee, employ such professional, clerical, technical, and other assistants as are necessary to serve at the pleasure of the chairman of the committee and, subject to the provisions of the State personnel regulations and budgetary laws, fix the compensation and travel expenses of all persons so employed, such compensation and travel expenses to be in keeping with the compensation paid to persons employed to do similar work in other State departments, institutions, or commissions.

(b) No salary or other compensation for services shall be allowed members of the committee who already receive compensation as officials or employees of the State. Service on the committee is to be considered as part of the duties of such officials as representatives of their respective departments. Reimbursement for travel shall be made from travel funds available in their respective departments. The other members of the committee who are not officials or employees of the State shall receive ten dollars (\$10.00) per day, including necessary time spent in traveling to and from their place of residence within the State to any place of meeting or while traveling on official business of the committee. In addition, they shall receive mileage according to State practice while going to and from any place of meeting or when on official business of the committee.

(c) For the more efficient conduct of the fiscal affairs of the committee, as well as for the convenience of any State agency, officer or department that may hold or have appropriated to or the custody of funds for the use and benefit of the committee, all such funds shall be held in a separate or special account on the books and records of such State agency, officer or department with a separate financial designation or code number to be assigned by the Budget Bureau or its agent, and said funds shall be expended solely upon the proper authorization or order of the committee. (1955, c. 972, s. 1; 1957, c. 1357, s. 1.)

§ 130-196. District pathologists.—The committee shall have the power to divide the State into districts, and to alter such districts as from time to time the committee shall see fit, for the more effective administration of its duties under this article. The chairman of the committee shall be empowered, with the concurrence of the committee, to appoint district pathologists to serve at the pleasure of the committee. Any person holding the office of coroner may be appointed as district pathologist or as a member of the committee, and any coroner who may be so appointed shall serve as such as a part of his duties as a coroner and shall not be

considered as holding a separate office within the meaning of article 14, § 7, of the Constitution of North Carolina.

It shall be the duty of each district pathologist with whatever aid, assistance, and guidance by the chairman of the committee as the circumstances may require, to perform a complete autopsy upon the body of the deceased in cases referred to him, under the provisions of G. S. 130-199 below, and to make pathological studies of such anatomical materials as may be submitted to him by any medical examiner in his district or by others empowered by this article to make such reference in the performance of their official duties.

The district pathologist shall prepare a report to the chairman of the committee on every post-mortem examination, and on every pathological anatomical study, in such form as may from time to time be prescribed by the committee, copies of which he shall deliver to the referring medical examiner or other referring person, to the solicitor of the superior court of the district, and to the coroner of the county wherein the body of the deceased or any part of a body examined by him was found: Provided that a copy of said report shall be furnished to any other interested person upon order of a court of record after need therefor has been shown.

For each autopsy performed by reason of reference by a medical examiner or by others empowered by this article to make such references, the district pathologist shall receive a fee to be fixed in each case by the board of county commissioners, after consultation with the committee, and paid by the county of legal residence of the deceased or by the county wherein the body or remains of the deceased were first found, if the legal residence is unknown or is other than the State of North Carolina.

For each report made on pathological anatomical materials submitted to him for study, the district pathologist shall receive a fee to be fixed in each case by the board of county commissioners, after consultation with the committee, and paid by the county wherein the anatomical materials were first found.

Such fees shall constitute full compensation of the district pathologist for duties performed under this section. (1955, c. 972, s. 1; 1957, c. 1357, s. 1.)

§ 130-197. County medical examiner.—The chairman of the committee shall appoint, subject to the approval of the committee and of the board of county commissioners of each county of the State that elects to come under this article, a qualified and practicing physician as medical examiner for the county to serve at the pleasure of the board of county commissioners and until his successor has been appointed and qualified, and said person so appointed may be the county coroner, and any coroner who may be so appointed shall serve as such as a part of his duties as a coroner and shall not be considered as holding a separate office within the meaning of article 14, § 7, of the Constitution of North Carolina. Each county medical examiner may appoint one or more assistant county medical examiners, with the concurrence of the chairman of the committee, to serve at the pleasure of the county medical examiner who makes such appointment.

Upon the death of any person on or after January 1, 1956, apparently by the criminal act or default of another, or apparently by suicide, or suddenly when apparently in good health, or while an inmate of any penal or correctional institution, or under any suspicious, unusual or unnatural circumstances, the medical examiner of the county in which the body of the deceased is found shall be notified by the physician in attendance, by any law enforcement officer having knowledge of such death, by the funeral director, by a member of the family of the deceased, by any person present, or by any person having knowledge of such deaths, and no person shall disturb the body at the scene of death until authorized by the county medical examiner. In cases which come under G. S. 152-7, the medical examiner shall notify the coroner.

A similar procedure shall be followed upon discovery of anatomical material sus-

pected of being or determined to be a part or parts of a human body. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1963, c. 492, s. 4.)

Editor's Note.—The 1963 amendment substituted "funeral director" for "undertaker" in the first sentence of the second paragraph.

§ 130-198. Duties of county medical examiner.—Upon receipt of notice as specified in G. S. 130-197, the county medical examiner shall in each case make a physical and medical examination of the body or parts of a body which may be found, make inquiries regarding the cause and manner of death, reduce his findings to writing, and promptly make a full report thereof to the coroner of the county in which the body or any part of a body was found, to the solicitor of the superior court of the district in which the body or any part of a body was found, to the chairman of the committee and may, upon request furnish a copy of his report to the head of the law enforcement agency charged with the responsibility for the investigation of the incident upon forms or in the manner prescribed by the committee: Provided that a copy of said report shall be furnished to any other interested person upon order of a court of record after need therefor has been shown. The county medical examiner may delegate his duties in a particular case to one of his assistant county medical examiners, or may perform the same jointly with him.

For each investigation under this article, including the making of the required reports, the county medical examiner shall receive a fee to be fixed by the board of county commissioners, after consultation with the committee, which shall be paid by the county for which he is appointed. (1955, c. 972, s. 1; 1957, c. 1357, s. 1.)

§ 130-199. When autopsies and other pathological examinations to be performed.—If, in the opinion of the medical examiner of the county wherein the body or anatomical material is first found under any of the circumstances set forth in G. S. 130-197, it is advisable and in the public interest that an autopsy or other pathologic study be made, or if an autopsy or other pathologic study is requested by the superior court solicitor or by any superior court judge, having authority in the judicial district wherein such county lies, such autopsy or pathological study shall be made by the district pathologist or by a competent pathologist designated by the chairman of the committee for such purpose.

In any case of death under circumstances set forth in G. S. 130-197 where a body shall be buried without a medical examination being made as specified in G. S. 130-198, or in any case where a body shall be cremated except in compliance with the provisions of this article, G. S. 130-200 in particular, it shall be the duty of the medical examiner of the county in which the body is buried, was cremated, or the remains were found, upon being advised of such facts, to notify the superior court solicitor who shall communicate the same to any resident or assigned judge of the superior court, and such judge may order that the body or the remains be exhumed and an examination or autopsy performed thereon by the district pathologist, or by a pathologist appointed by the chairman of the committee. The pertinent facts disclosed by the examination or autopsy shall be communicated to the superior court judge who ordered it, for such action thereon as he, or the court of which he is judge, deems proper. A copy of the report of the examination or autopsy findings and interpretations shall be filed with the chairman of the committee and the superior court solicitor: Provided that a copy of said report shall be furnished to any other interested person upon order of a court of record after need therefor has been shown. (1955, c. 972, s. 1; 1957, c. 1357, s. 1.)

§ 130-200. When medical examiner's permission necessary before embalming, burial and cremation.—(a) In any case where it is the duty of the county medical examiner to view the body and investigate the death of a deceased person as herein provided, it shall be unlawful to embalm the said body until the written permission of the county medical examiner has first been obtained, and such county medical examiner shall make the certificate of death required for a burial-transit

permit, stating thereon the name of the disease causing death; or, if from external causes,

(1) The means of death, and

(2) Whether (probably) accidental, suicidal, homicidal; and shall, in any case, furnish such information as may be required by the State Registrar of Vital Statistics in order properly to classify the death.

(b) It shall be unlawful to embalm or to bury a dead body, or to issue a burial-transit permit, when any fact within the knowledge of, or brought to the attention of, the embalmer, the funeral director, or the local registrar of vital statistics charged with the issuance of burial-transit permits, is sufficient to arouse suspicion of crime in connection with the death of the deceased, until the written permission of the county medical examiner has first been obtained.

(c) No burial-transit permit for cremation of a body shall be issued by the local registrar charged therewith and no cremation of a body shall be carried out until the county medical examiner shall have certified in writing that he has made inquiry into the cause and manner of death and is of the opinion that no further examination concerning the same is necessary. (1955, c. 972, s. 1; 1957, c. 1357, s. 1; 1963, c. 492, s. 4.)

Editor's Note.—The 1963 amendment substituted "funeral director" for "undertaker" near the middle of subsection (b).

§ 130-201. Coroner to hold inquests, etc.; post-mortem examinations and remains under control of chairman of committee.—Nothing in this article shall be construed as precluding a coroner from holding inquests or taking other steps as provided in G. S. 152-7 as hereby amended. All post-mortem examinations under this article shall be held and done under and subject to the control and direction of the chairman of the committee, who is hereby also vested with primary control over the remains, subject to the provisions of this article. (1955, c. 972, s. 1; 1957, c. 1357, s. 1.)

§ 130-202. Election to adopt article.—This article shall not become effective until after its adoption by resolution of the board of county commissioners of the county desiring to come within the purview of this article. Any county having elected to come within the purview of this article may, at the end of any fiscal year of such county, by appropriate resolution exclude itself from the provisions of this article. (1955, c. 972, s. 1; 1957, c. 1357, s. 1.)

ARTICLE 22.

Remedies.

§ 130-203. Penalties.—Except as otherwise provided in this chapter, any person who violates any provision of this chapter or who willfully fails to perform any act required, or who willfully does any act prohibited by this chapter, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine or by imprisonment for a period not to exceed two years or by both such fine and imprisonment in the discretion of the court; provided, however, that any person who willfully violates any rules or regulations adopted by the State Board of Health or by any local board of health pursuant to this chapter or who willfully fails to perform any act required by, or who willfully does any act prohibited by, such rules and regulations shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed fifty dollars (\$50.00) or by imprisonment for a period not to exceed thirty days. (1957, c. 1357, s. 1.)

§ 130-204. Right of entry.—Authorized representatives of the State Board of Health or any local board of health shall have at all times the right of proper entry upon any and all parts of the premises of any place in which such entry is necessary

to carry out the provisions of this chapter, or the rules and regulations adopted under the authority of this chapter; and it shall be unlawful for any person to resist a proper entry by such authorized representatives of the State Board of Health or local board of health upon any premises other than a private dwelling. (1957, c. 1357, s. 1.)

When Judge May Direct Verdict.—In an indictment against one who is charged with willfully obstructing a sanitary inspector of the State Board of Health in the discharge of his duties, the trial judge may not direct a verdict, and it is only when uncontradicted evidence, if accepted as true, establishes the defendant's guilt that he may properly instruct the jury to return a verdict of guilty if they find the evidence to be true beyond a reasonable doubt. *State v. Estes*, 185 N. C. 752, 117 S. E. 581 (1923).

Mere words or opprobrious language with

an expression of an intention to resist are not sufficient to sustain an indictment for willfully interfering with or obstructing an officer of the law in the performance of his duties, as formerly prescribed by this section, unless spoken under circumstances which are calculated to deter an officer of ordinary courage and reasonable prudence in the discharge of his duty pertaining to his office, which raises an issue of fact for the jury to determine. *State v. Estes*, 185 N. C. 752, 117 S. E. 581 (1923).

§ 130-205. Injunction.—If any person shall violate or threaten to violate the provisions of this chapter or any rules and regulations adopted pursuant thereto and such violation, if continued, or such threatened violation, if committed, is or may be dangerous to the public health or if any person shall hinder or interfere with the proper performance of duty of the State Health Director or his representative or any local health director or his representative and such hindrance or interference is or may be dangerous to the public health, the State Health Director or any local health director may institute an action in the superior court of the county in which such violation, threatened violation, hindrance or interference occurred for injunctive relief against such continued violation, threatened violation, hindrance or interference, irrespective of all other remedies at law, and upon the institution of such an action, the procedure shall be in accordance with the provisions of article 37 of chapter 1 of the General Statutes. (1957, c. 1357, s. 1.)

ARTICLE 23.

Mosquito Control in General.

§ 130-206. Mosquito control units within State Board of Health.—For the purpose of promoting a healthful environment and controlling the menace of swarming mosquitoes, the State Board of Health shall maintain appropriate units of mosquito control. The Board shall employ such qualified personnel as may be necessary to carry out the provisions of this article; provided, that if personnel employed under this article have been performing satisfactorily their duties as employees of the Salt Marsh Mosquito Study Commission under the provisions of chapter 1197, Session Laws of 1955, for a period of one year or more, such employees shall be deemed qualified to hold equivalent positions under the State Board of Health and Merit System Council as they have held under the Salt Marsh Mosquito Study Commission. (1957, c. 832, s. 1.)

§ 130-207. Duties of State Board of Health.—The State Board of Health is authorized to engage in research, conduct investigations, develop programs, and do such other things as may be necessary to carry out the provisions and purposes of this article and to control the mosquito menace in this State, within the limits of appropriations, funds, or personnel which are or which may become available from any source for this purpose. (1957, c. 832, s. 2.)

§ 130-208. Transfer of assets.—All funds, facilities, and property allocated to the Salt Marsh Mosquito Study Commission created by chapter 1197, Session Laws of 1955, shall be transferred to the State Board of Health on July 1, 1957. The State Board of Health shall accept such funds and facilities and administer

them, together with any further funds or property made available to the State Board of Health for mosquito control purposes. (1957, c. 832, s. 3.)

§ 130-209. State Board of Health authorized to accept and administer funds.

—The State Board of Health is authorized to accept and allocate or expend any grants-in-aid for mosquito control purposes which may be made available to the State by the federal government. This article is to be liberally construed in order that the State and its citizens may benefit fully from such grants-in-aid. The Board is authorized to make such rules and regulations, not inconsistent with the laws of this State, as may be necessary to accomplish the purpose of this article. Any monies so received are to be deposited with the State Treasurer and are to be allocated or expended by the State Board of Health for the mosquito control purpose specified.

Funds received as grants-in-aid, funds appropriated by the State, and any other funds received by the State Board of Health for mosquito control purposes may be utilized to aid mosquito control districts or other local governmental units engaged in mosquito control undertakings, in accordance with rules and regulations adopted by the State Board of Health. In no case shall the monetary value of such aid provided with State funds exceed funds or the monetary value of other facilities provided locally for temporary control measures such as larviciding or adulticiding, nor twice the local funds or other facilities provided for improvements such as drainage, filling, and dyking. State aid shall not be given to mosquito control districts or other local governmental units until proof has been received by the State Board of Health that the required local funds are available and will be used for mosquito control, in accordance with a plan approved by the State Board of Health or its duly authorized representative.

In emergency situations where proved outbreaks of mosquito-borne diseases occur, the State Health Officer is authorized to utilize the appropriated State funds to suppress such outbreaks. (1957, c. 832, s. 4.)

ARTICLE 24.

Mosquito Control Districts.

§ 130-210. Creation and purpose.—For the purpose of preserving and promoting the public health and welfare by providing for the control of mosquitoes and other arthropods of public health significance, the creation of mosquito control districts, as hereinafter provided, is hereby authorized. A mosquito control district may be comprised of one or more contiguous counties or contiguous parts of one or more counties. (1957, c. 1247, s. 1.)

Editor's Note.—In Carteret and Pamlico counties the board of county commissioners of each county is clothed with and given all the powers and authority given to the gov-

erning bodies of mosquito control districts for mosquito control purposes under this article. See Session Laws 1961, c. 238.

§ 130-211. Nature of district; procedure for forming districts.—(a) A mosquito control district may be formed as hereinafter set out and when so formed, it shall be a body politic and corporate, and a political subdivision of the State of North Carolina and may sue and be sued in its corporate name.

(b) If the proposed district lies wholly within a single county, ten per cent (10%) or more of the resident freeholders within the proposed district may petition the board of county commissioners of the county in which the proposed district lies setting forth the boundaries of the district and a suggested name for the district. Upon receipt of such petition, the board of county commissioners shall consider it and if the formation of the district appears feasible and in the interest of public health, it shall forward said petition or a copy thereof to the State Board of Health which shall consider the advisability of the formation of such district. If the State

Board of Health deems the formation of such district advisable and in the interest of public health, it shall so notify the board of county commissioners whereupon said board shall give notice of a public hearing upon the question of the formation of such district by advertising the time, place and purpose of the hearing once each week for four (4) successive weeks prior to such hearing in some newspaper either published in the county or having a general circulation therein. The public hearing shall be presided over by the chairman of the board of county commissioners and shall be attended by a representative of the State Board of Health, and said hearing may be continued from time to time as may be necessary to hear the proponents and opponents of the formation of such district. If, after such hearing and after consultation with the representative of the State Board of Health, the board of county commissioners deems it advisable that such district should be created and established, it shall submit to the qualified voters residing within the proposed district at an election called for that purpose, the question of whether or not the district shall be created. Upon determining that the district should be created and established, and prior to the submission of the question of the formation of the district to the voters of the proposed district, the board of county commissioners may determine the maximum amount of special tax to be levied for mosquito control purposes should the formation of the district be approved by the voters; provided, however, that in no event shall the maximum authorized levy exceed thirty-five cents (35¢) upon the one hundred dollar (\$100.00) assessed valuation. If the board of county commissioners determines that the maximum amount of special tax to be levied for mosquito control purposes should the voters approve the formation of the proposed district is to be less than thirty-five cents (35¢) on the one hundred dollar (\$100.00) valuation, the maximum amount thus determined must appear on the ballot to be used by the voters voting on the question of the creation of the district.

Prior to the submission of the question of the formation of the district to the voters within the proposed district, the board of county commissioners may make minor deviations in defining the boundaries of the proposed district upon a determination that such minor deviation from the boundaries described in the petition is in the interest of public health, provided that ten per cent (10%) of the resident freeholders within the revised boundaries shall have signed the petition proposing the creation of said district or additional resident freeholders within the revised boundaries of the proposed district shall sign the petition to bring the total number of petitioners within the proposed revised boundaries to not less than ten per cent (10%) of the qualified electors therein.

At the election provided for herein, the board of county commissioners shall provide one or more polling places within the proposed district, shall provide for a registrar and for judges of election at the polling places, shall provide for the registration of all qualified voters residing in said proposed district, shall cause to be prepared the necessary ballots, shall fix the time for holding the election, and shall conduct said election in every other respect according to the provisions of the laws governing general elections, so far as same may be applicable. The cost of holding the election shall be paid from the general or health fund of the county or from both as may be determined by the board of county commissioners. Notice of the time and purpose of the election and of the location of the polling place or places shall be published in some newspaper published or circulated within the proposed district at least three (3) times, the first of such notices to be published not less than thirty (30) days preceding the election.

The form of the question to be stated on the ballot shall be in substantially the following words:

☐ FOR creation of the (here insert name) Mosquito Control District and the levy of a special tax [here insert the words "not to exceed" and the maximum amount of special tax to be levied for mosquito control purposes if the board of county commissioners has determined that the maximum authorized amount is to be less than thirty-five cents (35¢) on the one

hundred dollar (\$100.00) assessed valuation] for mosquito control purposes.

“☐ AGAINST creation of the (here insert name) Mosquito Control District and the levy of a special tax [here insert the words “not to exceed” and the maximum amount of special tax to be levied for mosquito control purposes if the board of county commissioners has determined that the maximum authorized amount is to be less than thirty-five cents (35¢) on the one hundred dollar (\$100.00) assessed valuation] for mosquito control purposes.”

Such affirmative and negative forms shall be printed on one ballot and the voters shall make a mark of an “X” in one of the squares preceding the form.

If a majority of the qualified voters voting at the election vote in favor of creation of the district and the levy of the special tax, the board of county commissioners shall declare that such district exists, and shall adopt a resolution to that effect.

(c) In the event the proposed mosquito control district shall embrace lands lying in two or more counties, the petition signed by the requisite number of resident freeholders within the proposed district shall be addressed to the State Board of Health. If the State Board of Health deems the formation of the proposed district to be in the public interest and in the interest of public health, it shall hold a public hearing or hearings within the proposed district after first giving notice of the time and place of such hearing or hearings by publication once each week for four (4) successive weeks in some newspaper published or circulated in said proposed district. Public hearings shall be held in the courthouse of each of the counties in which any part of the proposed district is situated and may be held by any representative designated by the State Board of Health. After such hearing, if the State Board of Health deems the formation of the district to be in the public interest and beneficial to the public health, it shall order an election to be held upon the question of the formation of the district after first advertising the time of said election in the manner provided in subsection (b) hereof. At the request of the State Board of Health, the several counties in which any of the proposed district lies shall provide one or more polling places in the proposed district, shall provide for a registrar or registrars and judges of election at the polling places, and shall provide for the registration of all qualified voters residing within said district and within their respective counties. The State Board of Health shall provide for the printing and distribution of the ballots which shall be printed in substantially the same form as set out in subsection (b) hereof but which shall bear the facsimile signature of the secretary of the State Board of Health. The costs of printing and distributing said ballots and any other incidental costs shall be borne by and prorated among the several counties in which any of the district lies in accordance with each county's pro rata portion of the total number of acres within the district. Such pro rata portion shall be ascertained by the State Board of Health and certified to each county and shall be conclusive with respect to the pro rata part of expenses to be borne by each county. If the majority of the qualified voters voting at the election vote in favor of the creation of the district and the levy of the special tax, the State Board of Health shall declare that such district has been formed and created and shall certify such fact to the board of county commissioners of each county wherein any part of said district lies and each board of county commissioners shall insert such certification in its minutes. (1957, c. 1247, s. 2; 1959, c. 622, s. 1.)

Editor's Note.—The 1959 amendment added the last two sentences of the first paragraph of subsection (b). It also inserted the words in brackets in the fourth paragraph relating to form of question.

§ 130-212. Governing bodies for mosquito control districts.—Each mosquito control district shall be governed by a board of commissioners. In the case of a district lying wholly within a single county, the board shall be composed of five (5) members, all of whom shall be residents of the district. Three (3) of the members shall be appointed by the board of county commissioners, one for an initial term of

one (1) year, one for an initial term of two (2) years, and one for an initial term of three (3) years, and thereafter all appointments made by the board of county commissioners shall be for terms of three (3) years. One member shall be appointed by the State Health Officer and one member by the Director of the Wildlife Resources Commission, these two appointees to serve at the pleasure of the appointing authority. All vacancies shall be filled by the appointing authority.

In the case of a district lying in two or more counties, the board of commissioners of each county in which any part of the district lies shall appoint one member. The State Health Officer shall appoint one member and the Director of the Wildlife Resources Commission shall appoint one member. In the event the district lies in only two counties, the board of commissioners of the county in which a majority of the acreage of the district lies shall appoint two members, one for an initial term of one (1) year and the other for an initial term of two (2) years, and the other county shall appoint one member for an initial term of three (3) years. All succeeding terms of county appointees shall be for three (3) years. All vacancies shall be filled by the authority which appointed the member creating the vacancy, and the appointees of the State Health Officer and the Director of the Wildlife Resources Commission shall hold office at the pleasure of the appointing authority.

At its first meeting, the board shall elect a chairman, a vice-chairman, a secretary, and a treasurer, the last of which two officers may be combined in the same member. All official acts done by the board shall be entered in a book of minutes to be kept by the secretary. The board shall meet in regular meeting at least quarterly and may meet in a special meeting at any time upon call of the chairman or any two members, and upon notice of the time, place and purpose of the meeting of not less than three (3) days. Before entering upon the discharge of their duties, each member shall take and subscribe an oath of office as follows which oath shall be entered in the minute book:

"I,, do solemnly swear that I will well and truly perform my duties as a Commissioner of the Mosquito Control District, so help me God.

.....Signature
Sworn to and subscribed before me this day of, 19....
..... Signature of Officer Administering Oath".
(1957, c. 1247, s. 3.)

§ 130-213. Corporate powers.—A mosquito control district created in conformity with the provisions of this article shall have and exercise through its board of commissioners the following corporate powers in addition to such incidental powers as may be necessary in order to discharge its corporate functions:

- (1) To levy ad valorem taxes upon all the taxable property within the district at a rate not to exceed thirty-five cents (35¢) upon the adjusted one hundred dollar (\$100.00) assessed valuation. Provided, that where a mosquito control district lies solely within a single county and includes the entire county, the board of county commissioners may, in their discretion, levy and determine the rate of ad valorem tax to be levied at a rate not to exceed thirty-five cents (35¢) upon the adjusted one hundred dollar (\$100.00) assessed valuation; provided further, that where a mosquito control district lies wholly within a single county and the maximum authorized special tax approved by the voters at the time of voting on the creation of the district was less than thirty-five cents (35¢) on the one hundred dollar (\$100.00) assessed valuation, the ad valorem tax levy shall not exceed such lesser amount.

In the case of a district lying wholly within a single county, the valuations assessed by the county tax authorities shall be used by the mosquito control district or the board of county commissioners as the basis for its tax assessment and the mosquito control district or the board of

county commissioners shall certify its tax rate to the county tax collector or supervisor in time to have such rate and the amount of tax due thereupon entered upon the official county tax receipts and stubs or duplicates. It shall be the duty of the county tax collector to collect said taxes at the same time as county taxes are collected and deposit same to the credit of the mosquito control district in a depository or depositories designated by the governing board of said district.

In the case of a district lying in two or more counties, the commissioners of the mosquito control district shall horizontally equalize the assessed valuations of the property in the several counties in which the district lies by adjusting the ratio of assessed valuation in the several counties to the true values of the taxable property in the several counties. From such adjusted and equalized valuations, any board of commissioners of any county may appeal to the State Board of Assessment as in the case of an appeal by a property owner from a county board of equalization and review to the State Board of Assessment as provided in chapter 310 of the Public Laws of 1939 as amended. Upon such equalized assessed valuations, the board of commissioners of the mosquito control district shall levy its tax and shall certify the amount of the levy against each taxpayer to the appropriate county tax collector or supervisor in time for the amount of such mosquito control district tax to be entered upon the county tax receipts and stubs or duplicates, and it shall be the duty of the several county tax collectors to collect said tax and deposit same to the credit of the mosquito control district in some depository or depositories designated by the commissioners of said district.

The taxes levied by virtue of this article shall become due, shall be subject to the same discounts and penalties and interest, and shall have the same remedies for the collection of the taxes and for the refund of such taxes as provided for county and municipal ad valorem taxation by chapter 310 of the Public Laws of 1939 as amended. Said taxes shall constitute a lien to the same extent and with the same force and effect as county and municipal ad valorem taxes and shall have equal priority with said taxes. Such taxes shall be deemed to be for a special purpose and for a necessary expense for which the special approval of the General Assembly is hereby given.

- (2) To accept gifts or endowments, and to receive federal and State grants-in-aid. All money or property acquired under this section or subdivision (1) of this section, or any other source, shall be deposited in a separate fund to be used solely for the purpose of carrying out the provisions of this article. Funds so deposited shall be withdrawn by warrants signed by the chairman of the governing board of the district, and countersigned by the secretary.
- (3) To take all necessary and proper steps to prevent the breeding of mosquitoes and other arthropods of public health significance within the district, and to destroy adult mosquitoes and other arthropods of public health significance found within the district.
- (4) To conduct arthropod control measures in cooperation with individuals, firms, corporations, and federal, State, and local governmental agencies.
- (5) To enter all places within the district for the purpose of inspection and survey, whether on privately owned land or not, and to treat with proper means all places, wherever situated, that are breeding mosquitoes or other arthropods of public health importance, and to do all things necessary or incidental to the power herein granted.
- (6) To acquire, either by purchase, condemnation, or otherwise, and to hold real and personal property, easements, rights-of-way, or other property

necessary or convenient for the accomplishing of the purpose of this article. And land which has been acquired by the board and improved by drainage, filling, dyking, or other treatment, and other real property held by the board may be sold or leased by the board through the process of competitive bidding. All condemnation proceedings are to be in accordance with the provisions of chapter 40 of the General Statutes of North Carolina.

- (7) To employ necessary personnel, fix salaries, purchase equipment, supplies and materials, make contracts, rent office or storage space, and perform other administrative functions necessary for the purpose of carrying out this article.
- (8) To borrow money in anticipation of tax collection in gross amounts not to exceed the anticipated tax receipts for the fiscal year and to execute and deliver its notes or bonds therefor.
- (9) To reimburse members and employees of the board for actual expenditures incurred in authorized travel.
- (10) To employ a district superintendent who is an engineer, entomologist, or otherwise qualified as an arthropod control specialist. The professional qualifications of the superintendent must be approved by an authorized representative of the State Health Officer. (1957, c. 1247, s. 4; 1959, c. 622, s. 2.)

Editor's Note.—The 1959 amendment added the provisos to the first paragraph of subdivision (1). It also inserted the words “or the board of county commissioners” in the first sentence of the second paragraph thereof.

§ 130-214. Adoption of plan of operation.—Sixty (60) days prior to the initiation of operations, the governing board of each mosquito control district must submit to the State Health Officer, in such detail as may be required by the State Health Officer, a plan of procedure and operation. The State Health Officer, through his authorized representative, shall have authority to approve, modify, or take other appropriate action in regard to such plans. No contract may be entered into, program embarked upon, or work begun prior to the approval of the plan by the State Health Officer or his authorized representative.

In addition, the governing board of each mosquito control district must submit to the State Health Officer at least sixty (60) days prior to the expiration of each fiscal year, in such detail as the State Health Officer may require, a plan of procedure and operation for the ensuing fiscal year. The State Health Officer, through his authorized representative, shall have authority to approve, modify, or take other appropriate actions in regard to such plans for the ensuing fiscal year. No contract may be entered into, program embarked upon, or work begun or continued prior to the approval of said plan by the State Health Officer or his authorized representative. (1957, c. 1247, s. 5.)

Local Modification.—Onslow: 1961, c. 750.

§ 130-215. Resolution authorizing bond issue and purpose for which bonds may be issued.—Either before or after the adoption of the plan as aforesaid, the governing board of any mosquito control district may pass a resolution (hereinafter sometimes referred to as “bond resolution”) authorizing the issuance of bonds of the district. The negotiable bonds of a mosquito control district may be issued for the purchase of land and equipment, or any other property, real, personal, or mixed, to be used in carrying out the functions of the district, or for any other purpose consistent with the control of mosquitoes and other arthropods of public health significance.

Such resolution shall state:

- (1) In brief and general terms, the purpose for which the bonds are to be issued.

- (2) The maximum aggregate principal amount of the bonds.
- (3) That a tax sufficient to pay the principal and interest of the bonds when due shall be annually levied and collected on all taxable property within the district.
- (4) That the resolution shall take effect when and if it is approved by the voters of the mosquito control district at an election.

Such resolution shall be published once a week for three successive weeks: Provided, however, the first of such publications shall be not later than the first publication of the notice of election required in § 130-218. A statement in substantially the following form (the blanks being first properly filled in), with the printed signature of the secretary of the governing board of the district appended thereto, shall be published with the resolution:

The foregoing resolution was adopted by the governing board of Mosquito Control District on the day of, 19...., and was first published on the day of, 19.... Any action or proceeding questioning the validity of said resolution must be commenced within thirty days after its first publication.

.....
Secretary,
Mosquito Control District.

(1957, c. 1247, s. 6.)

§ 130-216. Limitation of action to set aside bond resolution.—Any action or proceeding in any court to set aside a bond resolution adopted pursuant to this article, or to obtain any other relief upon the ground that such resolution is invalid, must be commenced within thirty days after the first publication thereof as provided in § 130-215. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of the resolution shall be asserted, nor shall the validity of such resolution be open to question in any court upon any ground whatever. (1957, c. 1247, s. 7.)

§ 130-217. Publication of resolution.—The resolution required by § 130-215 to be published shall be published in a newspaper published in the county in which the district lies, or if the district lies in two or more counties, in a newspaper published in each such county, or if there is no newspaper published in a county in which the whole or a part of the district lies, then and in lieu of a newspaper published in such county, in a newspaper which, in the opinion of the governing board of the district, has general circulation within the district. (1957, c. 1247, s. 8.)

§ 130-218. Call for election.—Following the adoption of a bond resolution by the governing board of the district, the said board shall call upon the board or boards of county commissioners in the county or counties in which the district, or any portion thereof is located, to name election officers, set date, name polling places, and cause to be held an election within the district on the proposition of issuing bonds as set forth in such bond resolution. If, at such election a majority of the registered voters who shall vote thereon at such election shall vote in favor of the proposition submitted, the bonds set forth in the bond resolution may be advertised, sold and issued in the manner provided by law. Should the proposition of issuing bonds submitted at any election as provided under this article fail to receive the required number of affirmative votes, the governing board of the district may, at any time after the expiration of six months, cause another election to be held for the same objects and purposes, or for any other objects and purposes. The expenses of holding bond elections shall be paid from the funds of the mosquito control district.

The board of commissioners of the county in which said mosquito control district is located, if wholly located in a single county, may in its discretion at any special election held under the provisions of this article make the whole district a voting precinct, or may create therein one or more voting precincts, as to it seems best to

suit the convenience of voters, the said precinct not to be the general election precinct, unless the boundaries of the mosquito district are coterminous with one or more general election precincts. If said district is located in more than one county, the election precincts therein shall be fixed by the board of the particular county in which the portion of the mosquito district is located.

The said board or boards of commissioners shall provide registration and polling books for each precinct in the mosquito control district, the cost of the same to be paid by the mosquito control district. The notice of the election shall be given by publication once a week for three successive weeks. It shall set forth the boundary lines of the district and the amount of bonds proposed to be issued. The first publication shall be at least thirty days before the election. At the first election after the organization of the mosquito control district, a new registration of the qualified voters within the district shall be ordered, and notice of such new registration shall be deemed to be sufficiently given, if given at least thirty days before the close of the registration books by publication once in some newspaper published or circulated in said district. The notice of registration may be considered one of the three notices required of the election. Time of such registration shall as near as may be conform with that of the registration of voters in municipal elections, as provided in G. S. 160-37. The published notice of registration shall state the days on which the books shall be open for registration of voters, and the place or places at which they will be open on Saturday. The books of such new registration shall close on the second Saturday before the election. The Saturday before the election shall be challenge day, and except as otherwise provided in this article, such election shall be held in accordance with the law governing general elections.

A ballot shall be furnished to each qualified voter in said election, which ballot may contain the words "For approval of the bond resolution adopted by the Board of Mosquito Control Commissioners of District on the day of, 19...., authorizing the issuance of not exceeding \$...... of bonds of said district (briefly stating the purpose of such bonds), and the levy of a tax for the payment thereof," and the words "Against approval of the bond resolution adopted by the Board of Mosquito Control Commissioners of District on the day of, 19...., authorizing the issuance of not exceeding \$...... of bonds of said district (briefly stating the purpose of such bonds), and the levy of a tax for the payment thereof," with squares opposite said affirmative and negative forms of the proposition submitted to the voters, in one of which squares the voter may make a cross (X) mark, but this form of a ballot is not prescribed. After the election and after the vote has been counted, canvassed, and returned to the board or boards of county commissioners, the election books shall be deposited in the office of the clerk of the superior court having the greatest number of acres within the district as polling books for the particular mosquito control district involved. At any subsequent election, a new registration may or may not be ordered, as may be determined by the governing board of the mosquito control district.

A statement of results of an election on the proposition of issuance of bonds showing the date of such election, the proposition submitted, the number of voters who voted for the proposition and declaring the result of the election shall be prepared and signed by a majority of the members of the governing board of the district, and deposited with the clerk of the superior court of the county in which the district lies, or, if parts of the district lie in two or more counties, with the clerk of the superior court of each of such counties. Such statement shall be published once. No right of action or defense founded upon the invalidity of such election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty days after the publication of such statement. (1957, c. 1247, s. 9.)

§ 130-219. Bonds.—The governing board of the district shall, subject to the provisions of this article, and under competent legal and financial advice, prescribe

by resolution the form of the bonds, including any interest coupons to be attached thereto, and shall fix the date, the maturities, the denomination or denominations, and the place or places of payment of principal and interest which may be at any bank or trust company within or without the State of North Carolina. The bonds shall not be sold at less than par and accrued interest, nor bear interest at a rate or rates in excess of six per centum (6%) per annum. The bonds shall be signed by the chairman and secretary of the governing board of the district, and the seal of the governing board shall be impressed thereon, and any coupons attached thereto shall bear a facsimile of the signature of the secretary of said governing board in office at the date of the bonds, or at the date of delivery thereof. The delivery of bonds so executed shall be valid, notwithstanding any change in officers or in the seal of the governing board occurring after the signing and sealing of the bonds. Bonds issued under this article shall be payable to bearer, unless they are registered as hereinafter provided, and each coupon appertaining to a bond shall be payable to the bearer of the coupon. A mosquito control district may keep in the office of the secretary of the governing board, or in the office of a bank or trust company appointed by said governing board as bond registrar or transfer agent, a register or registers for the registration and transfer of its bonds, in which it may register any bond at the time of its issue or, at the request of the holder, thereafter. After such registration, the principal and interest of the bond shall be payable to the person in whose name it is registered, except in the case of a coupon bond registered as to principal only, in which case the principal shall be payable to such person, unless the bond shall be discharged from registration by being registered as payable to bearer. After registration, a bond may be transferred on such register by the registered owner in person, or by attorney, upon presentation to the bond registrar, accompanied by delivery of a written instrument of transfer in a form approved by the bond registrar, executed by the registered owner. Upon the registration or transfer of a bond as aforesaid, the bond registrar shall note such registration or transfer on the back of the bond. A mosquito control district may, by recital in its bonds, agree to register the bonds as to principal only, or agree to register them either as to principal only or as to both principal and interest, at the option of the bondholder. Upon the registration of a coupon bond as to both principal and interest, the bond registrar shall also cut off and cancel the coupons, and endorse upon the back of such bond a statement that such coupons have been canceled. The proceeds from the sale of such bonds shall be placed in a bank in the State of North Carolina to the credit of the governing board of the district, and payments therefrom shall be made by vouchers signed by the chairman and secretary of the governing board. The officer or officers having charge or custody of funds of the district shall require said bank to furnish security for the protection of deposits of the district, as provided in G. S. 159-28. Bonds issued pursuant to this article shall be subject to the provisions of the Local Government Act. The cost of preparing, issuing, and marketing bonds shall be deemed to be one of the purposes for which the bonds are issued. (1957, c. 1247, s. 10.)

§ 130-220. Dissolution of certain mosquito control districts.—In any mosquito control district established under this chapter which has no outstanding indebtedness, fifty-one per cent (51%) or more of the resident freeholders therein may petition the board of commissioners of the county in which all or the greater portion of the resident freeholders of the district are located to dissolve said district. Upon receipt of such petition, the board of county commissioners through its chairman, shall notify the State Board of Health and the chairman of the board of county commissioners of any other county or counties in which any portion of the district lies, of the receipt of such petition, and shall request that a representative of the State Board of Health hold a joint public hearing with the said county commissioners concerning the dissolution of the district. The State Health Director and the chairman of the board of county commissioners shall name a time and place within the district at which the public hearing shall be held. The chairman of the board of

county commissioners shall give prior notice of such hearing by posting a notice at the courthouse door of the county and also by publication in a newspaper published in said county at least once a week for four successive weeks; and in the event such hearing is to be before a joint meeting of the boards of county commissioners of more than one county, then a like publication and notice shall be made and given in each of said counties. In the event that all matters pertaining to the dissolution of the mosquito control district cannot be concluded at the hearing, any such hearing may be continued to a time and place determined by the representative of the State Board of Health. If, after such hearing, the State Board of Health and the county commissioners concerned shall deem it advisable to comply with the request of said petition, the State Board of Health shall adopt a resolution to that effect, whereupon the district shall be deemed dissolved. (1959, c. 622, s. 3.)

ARTICLE 25.

State Air Hygiene Program.

§ 130-221. **Short title.**—This article may be cited as the “State Air Hygiene Program Act.” (1963, c. 536).

Editor’s Note.—The act adding this article became effective July 1, 1963.

§ 130-222. **Definitions.**—(a) “Air pollution” means the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in such quantities and of such duration which are injurious to human, plant, or animal life, or property.

(b) “Person” shall include any individual, firm, partnership, cooperative organization, corporation, municipality, any other political subdivision of the State, or other organizational entity. (1963, c. 536.)

§ 130-223. **Creation of State air hygiene service; personnel; expenditure of funds.**—The State Board of Health is hereby authorized and empowered:

- (1) To create a State air hygiene service and to administer the provisions of this article;
- (2) To employ or appoint such personnel as are necessary for the carrying out of the provisions of this article; and,
- (3) To expend such State funds, federal grants-in-aid, or donations as are made to the State Board of Health for the purpose of establishing a State air hygiene service and otherwise carrying out the provisions of this article. (1963, c. 536.)

§ 130-224. **Authority of State air hygiene service.**—The State air hygiene service to be established by the State Board of Health is authorized to:

- (1) Advise, consult, and cooperate, within the limitations of this article, with other State agencies, local governmental units, industries, the federal government, and other affected agencies or groups in matters relating to air pollution;
- (2) Collect and disseminate information relative to air pollution prevention and control;
- (3) Initiate, supervise and encourage research and studies of existing air quality methods of examination and appraisal, and develop procedures and standards for State-wide application with special emphasis on the effect of air contaminants;
- (4) Encourage local agencies to handle air pollution problems to the maximum extent that their resources will permit; and
- (5) Provide technical assistance and cooperation to local and regional air pollution control programs. (1963, c. 536.)

§ 130-225. **Authority of State Health Director.**—The State Health Director or his duly authorized deputy or agent shall have authority to:

- (1) Enter at reasonable times and inspect any building or equipment, for the purpose of investigating a known or suspected source of or contributing factor to air pollution. Nothing in this article shall authorize entry into noncommercial private dwellings without the consent of the occupants thereof.
- (2) Require persons engaged in operations which may result or contribute to air pollution to supply information when available about the pollution such as, but not limited to, composition of effluent sources of emission and rate of discharge; provided, however, that no person shall be required to disclose any secret formulae processes or methods used by any manufacturing operation carried on by him or under his direction. (1963, c. 536.)

§ 130-226. **Article cumulative; municipal powers unaffected.**—This article shall be in addition to all other laws relating to air hygiene or air pollution and shall not be construed to affect or modify the authority of any municipality to adopt ordinances pursuant to any other provisions of law. (1963, c. 536.)

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ARTICLE 1.*Orthopedic Hospital.*

§ 131-1. **Board of trustees; term of office; organization and powers.**—The Governor shall appoint a board of trustees, consisting of nine members, for the North Carolina Orthopedic Hospital, and they shall be divided into three classes of three members each. The first class shall be appointed for two years, the second for four years, and the third class for six years. They shall hold their offices until their successors have been appointed, and the term of office of each shall begin from the date of the selection of the site. The Governor shall fill all vacancies occurring by reason of death, resignation, or otherwise. The board of trustees shall organize by electing from its members a president, a secretary, and a treasurer, and three of its members as an executive committee. The board shall have power to erect any buildings necessary, make improvements, or in general do all matters and things that may be beneficial to the good government of the institution, and to this end they may make bylaws for the government of the same. (1917, c. 199, s. 4; C. S., s. 7254.)

§ 131-2. **Authorized to accept donations.**—The board of trustees of the North Carolina Orthopedic Hospital are hereby authorized and empowered to accept gifts, grants, donations, devises, and bequests of money, lands, goods and other property for and on behalf of said institution. (1927, c. 188, s. 1.)

§ 131-3. **Establishment of school for patients.**—There is hereby created and established in the North Carolina Orthopedic Hospital at Gastonia a school for patients who are between the ages of six and twenty-one years which shall be operated for the period of twelve months in each year, or such period during each year as such board of trustees may deem advisable, under the direction and supervision of the county board of education of Gaston County.

A principal and the necessary number of teachers in said school shall be allotted to said school by the State School Commission and shall be elected by the trustees of the North Carolina Orthopedic Hospital, upon the recommendation of the county superintendent of public instruction of Gaston County, which teachers shall hold certificates according to standards prescribed by the State Board of Education for teachers in the public schools of the State.

The State School Commission is hereby authorized to purchase such equipment and supplies as it deems necessary to carry out the purposes of this section. (1939, c. 186.)

ARTICLE 2.

Hospitals in Counties, Townships, and Towns.

§ 131-4. Establishment of public hospitals; election, tax, and bond issue.—Any county, township, or town may establish a public hospital in the following manner:

- (1) **Petition Presented.**—A petition may be presented to the governing body of any county, township, or town, signed by two hundred resident freeholders of such county, township, or town, one hundred and fifty of whom, in the case of a county, shall not be residents of the city, town, or village where it is proposed to locate such hospital, asking that an annual tax may be levied for the establishment and maintenance of a public hospital at a place in the county, township, or town named therein, or to be thereafter selected by the governing body of such county, township or town, and specifying the maximum amount of money proposed to be expended in purchasing or building such hospital.
- (2) **Election Ordered.**—Upon the filing of such petition the governing body of the county, township, or town shall order a new registration and shall submit the question to the qualified electors at the next general election to be held in the county, township, or town, or at a special election called for that purpose, first giving ninety days' notice thereof by publication once a week for four successive weeks beginning ninety days before the day of said election in one or more newspapers published in the county, township, or town, if any be published therein, and by posting such notice, written or printed, in each township of the county, in case of a county hospital, which notice shall include the text of the petition and state the amount of the tax to be levied upon the assessed property of the county, township, or town. The election shall be held at the usual places in such county, township or town for electing officers, the election officers shall be appointed by the board of county commissioners and the vote shall be canvassed in the same manner as in elections for officers for such county, township, or town.

No action to question the validity of any such election shall be brought or maintained after the expiration of sixty days from the canvassing of said vote, and after the expiration of said period it shall be conclusively presumed that said election has been held in accordance with the requirements of this section, unless within said period such action is instituted.

- (3) **Tax to Be Levied.**—The tax to be levied under such election shall not exceed one-fifteenth of one cent on the dollar for a period of time not exceeding thirty years, and shall be for the issue of county, township, or town bonds to provide funds for the purchase of a site and the erection thereon of a public hospital and hospital buildings. (1913, c. 42, s. 1; 1917, cc. 98, 268; 1919, c. 332, s. 1; C. S., s. 7255; 1923, c. 244, s. 1; 1929, c. 247, ss. 1, 2, 4.)

Cross References.—As to power of county to establish hospitals and tuberculosis dispensaries, see § 153-9. As to power of municipalities to establish and regulate hospitals, etc., see §§ 160-230 and 160-232.

§ 131-5. **Election on tax levy; collection and application of funds.**—The governing body of such county, township, or town shall submit to the qualified electors thereof, at a regular or special election, the question whether there shall be levied upon the assessed property of such county, township, or town a tax of one-fifteenth of one cent on the dollar for the purchase of real estate for hospital purposes, for the construction of hospital buildings, and for maintaining same, or for either or all of such purposes. The ballots to be used at any election at which the hospital question is submitted shall be printed with a statement substantially as follows:

☐ Yes.

For a cent tax for a bond issue for a public hospital and for maintenance of same.

☐ No.

If a majority of the qualified voters at such election on the proposition shall be in favor of a tax as submitted for a bond issue for a public hospital and for maintenance of same, the governing body shall levy the tax so authorized, which shall be collected in the same manner as other taxes are collected, and credited to the "Hospital Fund," and shall be paid out on the order of the hospital trustees for the purposes authorized by this article, and for no other purposes whatever. (1913, c. 42, s. 2; 1917, c. 268; 1919, c. 332, s. 2; C. S., s. 7256.)

§ 131-6. **Curative statute.**—All elections heretofore called or held under the provisions of this article, as amended, where notice has been given in accordance with § 131-4, and the election officers have been appointed either in compliance with § 131-4 or by the county board of elections, are hereby validated and declared to be in accordance with the requirements of the statute on said subject. (1929, c. 247, s. 3.)

§ 131-7. **Trustees; term of office; qualification and election.**—Should a majority of the qualified voters upon the question be in favor of establishing such county, township, or town hospital, the governing body shall proceed at once to appoint seven trustees chosen from the citizens at large with reference to their fitness for such office, three of whom may be women, all residents of the county, township, or town, not more than four of said trustees to be residents of the city, town, or village in which said hospital is to be located, in case of a county hospital, who shall constitute a board of trustees for such public hospital. The trustees shall hold their offices until the next following general election, when seven hospital trustees shall be elected and hold their offices, two for two years, two for four years, three for six years, and who shall by lot determine their respective terms. At each subsequent general election the offices of the trustees whose terms of office are about to expire shall be filled by the nomination and election of hospital trustees in the same manner as other officers are elected, none of whom shall be practicing physicians. (1913, c. 42, s. 3; 1917, c. 98, s. 2; c. 268; C. S., s. 7257.)

Local Modification.—Alamance: 1943, c. 379, s. 1; Lee: 1951, c. 1209, s. 1; Yancey: 1929, c. 117.

§ 131-8. **Officers elected by trustees; compensation.**—The trustees shall, within ten days after their appointment or election, qualify by taking the oath of civil officers and organize as a board of hospital trustees by the election of one of their number as chairman, one as secretary, and by the election of such other officers as they may deem necessary, but no bond shall be required of them. The treasurer of the county, township, or town in which such hospital is located shall be treasurer of the board of trustees. The treasurer shall receive and pay out all moneys under the control of said board, as directed by it, but shall receive no compensation from such board. No trustee shall receive any compensation for his services performed, but he may receive reimbursement for any cash expenditures actually made for personal expenses incurred as such trustee, and an itemized statement of all such ex-

penses and money paid out shall be made under oath by each of such trustees and filed with the secretary, and allowed only by the affirmative vote of all the trustees present at a meeting of the board. (1913, c. 42, s. 4; 1917, c. 268; C. S., s. 7258.)

§ 131-9. Trustees to have control, and to make regulations.—The board of hospital trustees shall make and adopt such bylaws, rules and regulations for their own guidance and for the government of the hospital as may be deemed expedient for the economic and equitable conduct thereof, not inconsistent with this article and the ordinances of the city or town wherein such public hospital is located. They shall have the exclusive control of the expenditure of all money collected to the credit of the hospital fund, and the purchase of the site or sites, the purchase or construction of any hospital building or buildings, and of the supervision, care, and custody of the grounds, rooms, or buildings purchased, constructed, leased, or set apart for that purpose. (1913, c. 42, s. 4; C. S., s. 7259.)

§ 131-10. Power of board to appoint superintendent and assistants.—The board of hospital trustees shall have power to appoint a suitable superintendent or matron, or both, and necessary assistants, and fix their compensation, and shall also have power to remove such appointees; and they shall in general carry out the spirit and intent of this article in establishing and maintaining a county, township, or town public hospital with equal rights to all and special privileges to none. (1913, c. 42, s. 4; 1917, c. 268; C. S., s. 7260.)

§ 131-11. Meetings of board; reports required.—The board of hospital trustees shall hold meetings at least once each month, and shall keep a complete record of all its proceedings. Four members of the board shall constitute a quorum for the transaction of business. One of the trustees shall visit and examine the hospital at least twice each month, and the board shall, during the first week in January of each year, file with the governing body of the county, township, or town a report of their proceedings with reference to such hospital, and a statement of all receipts and expenditures during the year; and they shall at such time certify the amount necessary to maintain and improve the hospital for the ensuing year. No trustee shall have a personal pecuniary interest, either directly or indirectly, in the purchase of any supplies for such hospital, unless the same are purchased by competitive bidding. (1913, c. 42, s. 4; 1917, c. 268; C. S., s. 7261.)

§ 131-12. Vacancies filled.—Vacancies in the board of trustees occasioned by removals, resignations, or otherwise shall be reported to the governing body of the county, township, or town and be filled in like manner as original appointments, appointees to hold office until the next following general election, when such vacancies shall be filled by election in the usual manner. (1913, c. 42, s. 5; 1917, c. 268; C. S., s. 7262.)

Local Modification.—Alamance: 1943, c. 379, s. 2.

§ 131-13. Deposit and payment of funds.—All money received for such hospital shall be deposited in the treasury of the county, township, or town to the credit of the hospital fund, and paid out only upon warrants drawn by the auditor, or other proper officer, of such county, township, or town upon the properly authenticated vouchers of the hospital board. (1913, c. 42, s. 4; 1917, c. 268; C. S., s. 7263.)

§ 131-14. Regulations as to bond issue.—Whenever any county, township, or town in this State shall have provided for the appointment and election of hospital trustees, and voted a tax for a term not exceeding thirty years for hospital purposes, as authorized by law, the county, township, or town may issue bonds in anticipation of the collection of such tax in such sums and amounts as the board of hospital trustees shall certify to the governing body of such county, township, or town to be necessary for the purposes contemplated by such tax, but such bonds in the aggregate shall not exceed the amount which might be realized by said tax, based on the amount

which may be yielded on the property valuation of the year in which the tax is voted. Such bonds shall mature in thirty years from date and shall be in sums not less than one hundred dollars nor more than one thousand dollars, drawing interest at a rate not exceeding five per cent per annum, payable annually or semiannually; the bonds shall be payable at pleasure of county, township, or town after five years, and each of said bonds shall provide that it is subject to this condition, and shall not be sold for less than par, and shall be substantially in the form provided for county bonds, but subject to changes that will conform them to the provisions of this article, and be numbered consecutively and redeemable in the order of their issuance. The governing body shall have the power and option of issuing, instead of long-term bonds, as above provided for, serial bonds in such forms and denominations as said governing body may determine, subject to the restrictions of this section. Said serial bonds may be issued as one issue or divided into two or more separate issues, and in either case may be issued all at one time or in blocks from time to time, and each issue thereof shall so mature that the aggregate principal amount of the issue shall be payable in annual installments or series, beginning not more than three years after the date of the bonds of such issue and ending not more than thirty years after such date. No installments shall be more than two and one-half times as great in amount as the smallest prior installment of the same bond issue. Said bonds, if said governing body shall elect to issue serial bonds instead of long-term bonds, may be either coupon bonds or registered bonds, and if issued in coupon form may be registerable as to principal, or as to both principal and interest, and shall be substantially in the form provided for county bonds as aforesaid, and likewise subject to changes that will conform them to the provisions of this article. (1913, c. 42, s. 6; 1917, c. 268; C. S., s. 7264; 1923, c. 244, ss. 3,4.)

§ 131-15. Condemnation of land.—If the board of hospital trustees and the owners of any property desired by them for hospital purposes cannot agree as to the price to be paid therefor, they shall report the fact to the governing body of the county, township, or town, and condemnation proceedings shall be instituted by such governing body and prosecuted in the name of the county, township, or town wherein such public hospital is to be located, by the attorney for such county, township, or town, under the provisions of law for the condemnation of land for railroads. (1913, c. 42, s. 7; 1917, c. 268; C. S., s. 7265.)

Cross Reference.—As to condemnation proceedings, see § 40-11 et seq.

§ 131-16. Plans to be approved; advertisement for bids.—No hospital buildings shall be erected or constructed until the plans and specifications have been made therefor and adopted by the board of hospital trustees, and bids advertised for according to law for other county buildings. (1913, c. 42, s. 8; C. S., s. 7266.)

§ 131-17. Additional appropriation.—In the counties, townships, or towns exercising the rights conferred by this article, the governing body may appropriate each year, in addition to tax for hospital fund hereinbefore provided for, not exceeding five per cent of its general fund for the improvement and maintenance of any public hospital so established. (1913, c. 42, s. 10; 1917, c. 268; C. S., s. 7267.)

§ 131-18. Power to accept donations.—Any person, firm, corporation, or society desiring to make donations of money, personal property, or real estate for the benefit of such hospital shall have the right to vest title of the property so donated in said county, township, or town, to be controlled, when accepted, by the board of hospital trustees according to the terms of the deed, gift, devise, or bequest of such property. (1913, c. 42, s. 13; 1917, c. 268; C. S., s. 7268.)

§ 131-19. Persons entitled to benefit of hospital.—Every hospital established under this article shall be for the benefit of the inhabitants of such county, township, or town, and of any person falling sick or being injured or maimed within its limits;

but every person who is not a pauper shall pay to such board of hospital trustees, or such officers as it shall designate, for such county public hospital, a reasonable compensation for occupancy, nursing, care, medicine, or attendance, according to the rules and regulations prescribed by the board, such hospital always being subject to such reasonable rules and regulations as the board may adopt, in order to render the use of the hospital of the greatest benefit to the greatest number. The board may exclude from the use of such hospital all persons who shall willfully violate such rules and regulations; the board may extend the privileges and use of such hospital to persons residing outside of such county, township, or town, upon such terms and conditions as may be prescribed from time to time by its rules and regulations. (1913, c. 42, s. 11; 1917, c. 268; C. S., s. 7269.)

§ 131-20. All persons subject to hospital regulations.—When such hospital is established, the physicians, nurses, attendants, the persons sick therein, and all persons approaching or coming within the limits of same, and all furniture and other articles used or brought there, shall be subject to such rules and regulations as said board may prescribe. (1913, c. 42, s. 12; C. S., s. 7270.)

§ 131-21. Municipal jurisdiction extended.—The jurisdiction of the city, town, or village in or near which a public hospital is located shall extend over all lands used for hospital purposes outside the corporate limits, if so located, and all ordinances of such cities and towns shall be in full force and effect in and over the territory occupied by such public hospital. (1913, c. 42, s. 9; C. S., s. 7271.)

§ 131-22. Regulation of physicians and nurses practicing in hospitals.—The board of trustees of such hospitals shall determine the conditions under which the privileges of practice within the hospital may be available to physicians, and shall promulgate reasonable rules and regulations governing the conduct of physicians and nurses while on duty in said hospital. (1913, c. 42, s. 14; C. S., s. 7272; 1925, c. 177.)

Editor's Note.—Prior to the 1925 amendment this section provided that no discrimination should be made and that a patient might employ his own physician.

§ 131-23. Training school for nurses.—The board of trustees of such county, township, or town public hospital may establish and maintain, in connection therewith and as a part of said public hospital, a training school for nurses. (1913, c. 42, s. 15; 1917, c. 268; C. S., s. 7273.)

§ 131-24. Room for examination of insane persons.—The board of trustees shall at all times provide a suitable room for the detention and examination of all persons who are brought before the commissioners of insanity for such county, provided that such public hospital is located at the county seat. (1913, c. 42, s. 16; C. S., s. 7274.)

§ 131-25. Charity patients determined.—The board of hospital trustees shall have the power to determine whether or not patients presented at the public hospital for treatment are subjects for charity, and shall fix the compensation to be paid by patients other than those unable to assist themselves. (1913, c. 42, s. 18; C. S., s. 7275.)

§ 131-26. Department for tuberculous patients.—The board of trustees are authorized to provide as a department of the public hospital, but not necessarily attached thereto, suitable accommodations and means for the care and treatment of persons suffering from tuberculosis, and to formulate such rules and regulations for the government of such persons, and for the protection from infection of other patients and of nurses and attendants in such public hospital, as they may deem necessary; and it shall be the duty of all persons in charge of or employed at such hospital, or residents thereof, to faithfully obey and comply with all such rules and regulations. The board of hospital trustees shall, if practicable, employ as head

nurse to be placed in charge of the public tuberculosis sanatorium one who has had experience in the management and care of tuberculous persons. (1913, c. 42, s. 17; C. S., s. 7276.)

§ 131-27. Plans for county and municipal tubercular sanatoria.—Any county or town desiring to erect a sanatorium or hospital, shack, tent, or other structure in which it is intended to keep persons suffering with tuberculosis shall first submit to the State Board of Health for its approval or rejection the plans of said sanatorium, hospital, shack, tent, or other structure, and it shall be unlawful for any county or town to begin the erection of any structure referred to above without the consent or approval of the State Board of Health.

Any person, firm, or corporation failing, neglecting, or refusing to comply with the provisions of this article shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, in the discretion of the court. (1917, c. 216, ss. 1, 2; C. S., s. 7277.)

§ 131-28. Nonresident tuberculous patients.—The governing body of any county, township, or town where no suitable provision has been made for the care of indigent tuberculous residents may contract with the board of hospital trustees of any public hospital for the care of such persons in the sanatorium department of such hospital, upon such reasonable terms as may be agreed upon. (1913, c. 42, s. 19; 1917, c. 268; C. S., s. 7278.)

ARTICLE 2A.

The County Hospital Act.

§ 131-28.1. Title of article.—This article shall be known and may be cited as "The County Hospital Act." (1945, c. 506, s. 1.)

§ 131-28.2. Conveyance of hospitals to counties; assumption of indebtedness approved by voters.—The governing body of any political subdivision or public hospital corporation or agency in the State is authorized to convey any hospital owned by it to the county in which such political subdivision or public hospital corporation or agency is located, upon such county assuming all outstanding indebtedness of such political subdivision or public hospital corporation or agency which was incurred for the purpose of erecting or purchasing such hospital, and any county is hereby authorized to acquire any such hospital and, subject to the provisions of this section, to assume such indebtedness. The board of commissioners of any such county is hereby authorized and empowered to call an election of the qualified registered voters of the county on the question of the assumption by such county of the outstanding indebtedness of such political subdivision or public hospital corporation or agency which was incurred for the purpose of erecting or purchasing such hospital, and the levy of a county-wide property tax without limitation as to rate or amount for the payment of the principal of and the interest on such indebtedness. Such election shall be called and conducted in accordance with the laws of North Carolina governing elections for the issuance of county bonds, and it shall be lawful to vote on other matters at such election. If a majority of the qualified registered voters of the county who shall vote on such assumption shall vote in favor thereof, then it shall be the duty of the board of commissioners of such county to include in the annual county budget beginning with the fiscal year next succeeding such election, a sum sufficient to meet the payment of the principal of and the interest on such indebtedness; provided, however, that said board shall have the same power and authority to fund or refund such indebtedness as it has to fund or refund other indebtedness of the county. Taxes levied under the terms of this section are hereby declared to be for a special purpose within the meaning of section six of article V of the Constitution of North Carolina, and the levy of such taxes for said special purpose is hereby given the special approval of the General Assembly. Upon the

assumption of such indebtedness by the county, all funds on hand for the payment of the principal of and the interest on such indebtedness, and all funds subsequently collected from taxes already levied in such political subdivision on account of such indebtedness, shall be paid over to the county and used to reduce the amount of the county-wide tax levy authorized by such election. Upon approval of the assumption of such indebtedness by the county, such indebtedness shall become, to all intents and purposes, indebtedness of such county; and it is hereby specifically declared that all payments on account of the principal of such indebtedness which shall be made after such assumption shall be construed as a reduction of the outstanding indebtedness of the county within the meaning of section four of article V of the Constitution of North Carolina. (1945, c. 506, s. 2; 1949, c. 358, s. 1.)

Editor's Note.—The 1949 amendment substituted in the fourth sentence “who shall vote on such assumption shall vote in favor thereof” for “shall vote in favor of such assumption.” For brief comment on amendment, see 27 N. C. Law Rev. 454.

§ 131-28.3. Counties authorized to erect, purchase and operate hospitals.—Each county in the State is hereby authorized to erect, remodel, enlarge and purchase hospitals, to finance the same as provided in this article, and to provide for the operation thereof. (1945, c. 506, s. 3.)

Expenditure of Tax Funds for Construction of Hospital Is for Public Purpose.—The expenditure of tax funds for the construction of a general county hospital in accordance with this section is for a public purpose, and a county, when authorized by the General Assembly and with the approval of a majority of the voters as pro-

vided by § 131-28.4, has as much right to issue its bonds to provide hospital facilities for those citizens who are able to pay for the services rendered to them as it does to provide such facilities for the sick and afflicted poor. *Rex Hospital v. Wake County Board of Com'rs*, 239 N. C. 312, 79 S. E. (2d) 892 (1954).

§ 131-28.4. Issuance of bonds subject to approval of voters.—Subject to the approval by the vote of a majority of the qualified registered voters of the county who shall vote thereon at an election to be called and conducted in accordance with the laws of North Carolina, any county, through its board of commissioners, is hereby authorized and empowered to issue bonds of the county for the special purpose of erecting, remodeling, enlarging or purchasing hospitals, including the acquisition of necessary land and necessary equipment, and to levy property taxes for the payment of such bonds and the interest thereon. Any bonds so voted, and any bond anticipation notes which may be issued to anticipate the receipt of the proceeds of such bonds, shall be issued in accordance with the provisions of the County Finance Act, as amended, and the Local Government Act, as amended. (1945, c. 506, s. 4; 1949, c. 358, s. 2.)

Editor's Note.—The 1949 amendment inserted “who shall vote thereon” near the beginning of the section. For brief com-

ment on the amendment, see 27 N. C. Law Rev. 454.

§ 131-28.5. Referendum on question of tax to maintain hospital.—At any election at which the question of assumption by the county of hospital indebtedness pursuant to § 131-28.2, or at any election at which the question of issuing bonds of the county pursuant to § 131-28.4, shall be submitted to the qualified registered voters of the county, or at any other general or special election, there may be submitted to a vote of the qualified registered voters of such county the question of levying and collecting annually an ad valorem tax for the special purpose of maintaining any such hospital or hospitals from year to year, not greater than five cents on the one hundred dollars assessed valuation of taxable property in the county as shall be determined by the board of commissioners of such county, and if a majority of the qualified registered voters of the county who shall vote thereon shall vote in favor of levying and collecting such tax, the board of commissioners of such county shall be and hereby is authorized to levy and collect the same. The General Assembly

does hereby give its special approval to the levy of the tax for the special purpose referred to in this section. (1945, c. 506, s. 5; 1949, c. 358, s. 3.)

Editor's Note.—The 1949 amendment inserted "who shall vote thereon" near the end of the first sentence. For brief comment on the amendment, see 27 N. C. Law Rev. 454.

§ 131-28.6. New registration may be ordered for election held under article.—A new registration may be ordered for any election to be held under this article, and in the event a new registration is ordered the same shall be called and conducted in accordance with the provisions of the laws of North Carolina governing the calling and conducting of elections for the issuance of county bonds. (1945, c. 506, s. 6; 1949, c. 358, s. 4.)

Editor's Note.—The 1949 amendment rewrote this section.

§ 131-28.7. Result of election to be published; time to assert invalidity.—The board of commissioners of the county shall prepare a statement showing the number of votes cast for and against each question submitted under the provisions of this article, and the number of voters qualified to vote in each election at which any one or more of such questions shall be submitted, and declaring the result of the election on each such question, which statement shall be signed by a majority of the members of the board of commissioners and delivered to the clerk of said board, who shall record it in the minutes of the board and file the original in his office and publish it once. No right of action or defense founded upon the invalidity of any such election shall be asserted, nor shall the validity of any such election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty days after the publication of such statement of result as provided herein. (1945, c. 506, s. 7.)

§ 131-28.8. Appointment of board of trustees; terms of office; vacancies.—Should a majority of the qualified registered voters of any county who shall vote thereon at an election called and held as above provided approve the assumption by the county of hospital indebtedness or the issuance of bonds of the county for the special purpose of erecting, remodeling, enlarging, or purchasing a hospital or hospitals, the board of commissioners of the county shall proceed at once to appoint from the citizens of the county three trustees from each township in which a hospital or hospitals are to be acquired or erected hereunder, and one trustee from each of the remaining townships in the county, such trustees to be chosen with special reference to their fitness for such office. In the event that a hospital is thereafter acquired or erected hereunder in any of said remaining townships the board of commissioners shall thereupon appoint two additional trustees from such township. The trustees so appointed shall constitute a board of trustees for the hospital or hospitals acquired or erected under the provisions of this article. The first trustees from each township from which there shall be three trustees shall be appointed by the board of commissioners for terms of one, two and three years, respectively. The first trustees from the remaining townships shall be appointed for terms of one, two and three years, respectively, so that the terms of at least one third of the trustees from such remaining townships shall expire each year. As the term of each trustee expires a successor trustee shall be appointed from the same township for a term of three years. Each trustee shall serve until his or her successor is appointed and qualified. No trustee shall succeed himself or herself. Any vacancy in the board of trustees shall be filled by the board of commissioners of the county for the unexpired term. (1945, c. 506, s. 8; 1949, c. 358, s. 5.)

Local Modification.—Pitt: 1949, c. 877, s. 4; Pasquotank: 1959, c. 203.

Editor's Note.—The 1949 amendment in-

serted "who shall vote thereon" near the beginning of the section.

§ 131-28.9. Organization of board; bond, compensation and duties of hospital treasurer; annual audit; reimbursement for expenses.—The trustees shall, within ten days after their appointment, qualify by taking the oath of civil officers and organize as a board of hospital trustees by the election of one of their number as chairman, and by the election of such other officers and committees as they shall deem necessary, including a treasurer for each hospital under the jurisdiction and control of such board, but none of such officers except the hospital treasurers shall be required to give bond. Each hospital treasurer shall give a bond in such amount as shall be fixed by the board of commissioners of the county, and shall receive such compensation, payable solely from hospital income, as shall be determined by the board of hospital trustees. The treasurer for each hospital shall receive all income of such hospital, including all moneys paid for the use of the facilities and services thereof, and shall pay out the same and account therefor as directed by the board of hospital trustees. He shall make a monthly report of his receipts and disbursements to the board of commissioners of the county and the board of hospital trustees. An annual audit shall be made of the receipts and disbursements of each hospital by a certified public accountant selected by the board of commissioners of the county and copies of such audit shall be furnished the board of commissioners of the county and the board of hospital trustees, and a condensed copy of such audit shall be published in a newspaper of general circulation in the county. No trustee shall receive any compensation for services performed by him but he may receive reimbursement, from such hospital funds as the board of hospital trustees shall determine, for any cash expenditures actually made for personal expenses incurred as such trustee, and an itemized statement of all such expenses and moneys paid out shall be made under oath by each of such trustees and filed with the board of hospital trustees and allowed by the affirmative vote of all of the trustees present at any meeting of the board. (1945, c. 506, s. 9.)

§ 131-28.10. Board to adopt bylaws, rules and regulations; control of expenditures.—The board of hospital trustees shall make and adopt such bylaws, rules and regulations for their own guidance and for the government of the hospital or hospitals under their jurisdiction and control as may be deemed expedient for the economic and equitable conduct and operation thereof, not inconsistent with this article or the ordinances of the city or town wherein such hospital or hospitals shall be located. The board of hospital trustees shall have the exclusive control of the expenditure of all moneys provided pursuant to the provisions of this article for the purpose of erecting, remodeling, enlarging, or purchasing hospitals, including the acquisition of necessary land and necessary equipment, and all moneys collected through the operation of such hospitals and all moneys provided for the maintenance and operation thereof, but no moneys provided for the payment of the hospital indebtedness of the county shall be subject to the control of such hospital board. (1945, c. 506, s. 10.)

§ 131-28.11. Appointment and removal of superintendent and other personnel; carrying out intent of article.—The board of hospital trustees shall have power to appoint suitable superintendents or matrons, or both, and necessary assistants, and to fix their compensation, and shall also have power to remove such appointees, and such board shall in general carry out the spirit and intent of this article in establishing and maintaining a county hospital or hospitals, with equal rights to all and special privileges to none. (1945, c. 506, s. 11.)

§ 131-28.12. Meetings of board; quorum; visitation; reports; pecuniary interest in purchase of supplies.—The board of hospital trustees shall hold meetings at least once every three months, and shall keep a complete record of all its proceedings. A majority of the members of the board shall constitute a quorum for the transaction of business. At least two of the trustees shall visit and examine the hospital or hospitals at least twice each month. The board of hospital trustees shall,

during the first week in January of each year, file with the board of commissioners of the county a report of its proceedings with reference to such hospital or hospitals, and a statement of all receipts and expenditures during the year, and shall at such times certify the amount necessary in its opinion to maintain and improve each hospital for the ensuing year. No trustee shall have a personal pecuniary interest, either directly or indirectly, in the purchase of any supplies for any county hospital, unless the same are purchased by competitive bidding. (1945, c. 506, s. 12.)

§ 131-28.13. Deposit and withdrawal of funds.—All moneys received for the credit of each hospital shall be deposited by the hospital treasurer in a special fund for such hospital, and shall be paid out only upon warrants drawn by such hospital treasurer or other proper officer designated by the board of hospital trustees upon due authorization by such board. (1945, c. 506, s. 13.)

§ 131-28.14. Condemnation proceedings.—If the board of hospital trustees and the owners of any property desired by the board for hospital purposes cannot agree as to the price to be paid therefor, the board shall report the fact to the board of commissioners of the county, and condemnation proceedings shall be instituted by such board of commissioners and prosecuted in the name of the county under the provisions of law for the condemnation of land for railroads. (1945, c. 506, s. 14.)

§ 131-28.15. Plans for buildings; advertising bids.—No hospital buildings shall be erected, remodeled or enlarged until the plans and specifications have been made therefor and adopted by the board of hospital trustees, and bids advertised for according to law for other county buildings. (1945, c. 506, s. 15.)

§ 131-28.16. Donations and gifts.—Any person, firm, corporation or society desiring to make donations of moneys, personal property, or real estate for the benefit of any hospital acquired or erected hereunder shall have the right to vest title to the property so donated in the county, to be controlled, when accepted, by the board of hospital trustees according to the terms of the deed, gift, devise or bequest of such property. (1945, c. 506, s. 16.)

§ 131-28.17. Persons entitled to benefit of hospital; charges for treatment; exclusion for violation of rules.—Every hospital acquired or constructed under this article shall be for the benefit of the inhabitants of the county and of any person falling sick or being injured or maimed within the limits of the county; but every person using the facilities or services of any such hospital who is not a pauper shall pay a reasonable compensation for occupancy, nursing, care, medicine, or attendance, according to the rules and regulations prescribed by the board of hospital trustees, such hospital or hospitals always being subject to such reasonable rules and regulations as the board may adopt for the purpose of rendering the use of such hospital or hospitals of the greatest benefit to the greatest number. The board of hospital trustees may exclude from the use of any such hospital all persons who shall willfully violate such rules and regulations. Such board may extend the privileges and use of any such hospital to persons residing outside of the county upon such terms and conditions as may be prescribed from time to time by its rules and regulations. (1945, c. 506, s. 17.)

§ 131-28.18. Persons and articles subject to rules and regulations.—When such hospital or hospitals are established as county public hospitals the physicians, nurses, attendants, the persons sick therein, and all persons approaching or coming within the limits of the same, and all furniture and other articles used therein or brought thereto, shall be subject to such rules and regulations as the board of hospital trustees may prescribe. (1945, c. 506, s. 18.)

§ 131-28.19. Regulation of physicians and nurses.—The board of hospital trustees shall determine the conditions under which the privileges of practice within

the hospitals under its jurisdiction and control shall be available to physicians, and the board shall promulgate reasonable rules and regulations governing the conduct of physicians and nurses while on duty in said hospitals. (1945, c. 506, s. 19.)

§ 131-28.20. Training school for nurses.—The board of hospital trustees may establish and maintain, in connection with and as a part of any hospital under its jurisdiction and control, a training school or training schools for nurses. (1945, c. 506, s. 20.)

§ 131-28.21. Powers granted are additional.—The powers granted by this article are in addition to and not in substitution for existing powers of counties in the State of North Carolina. (1945, c. 506, s. 21.)

§ 131-28.22. Validation of elections.—All elections heretofore called or held for the issuance of county hospital bonds and all elections heretofore held for levying and collecting annually an ad valorem tax for the special purpose of maintaining county hospitals, which could have been held under the provisions of this article had the same then been in effect and operation, are hereby ratified, approved and confirmed, and all county hospital bonds heretofore issued pursuant to any such election are hereby ratified, approved and confirmed. (1945, c. 506, s. 22.)

ARTICLE 2B.

County-City Hospital Facilities for the Poor.

§ 131-28.23. Counties authorized to provide facilities in conjunction with certain cities.—Authority is hereby granted to the board of commissioners of any county in the State now or hereafter having a population of one hundred thousand or over and a city within its borders now or hereafter having a population of seventy-five thousand or over to provide adequate hospital facilities for the care of the sick and afflicted poor of such county. The exercise of the authority hereby granted through the contracts herein referred to, and the appropriations and taxes for the construction, installation, and maintenance of such facilities are hereby declared to be for necessary expenses and for a special purpose within the meaning of the Constitution of North Carolina and for which the special approval of the General Assembly of North Carolina is hereby given, and shall be valid and binding without a vote of the majority of the qualified voters of the county, and are expressly exempted and excepted from any limitation, condition or restriction prescribed by the County Fiscal Control Act and acts amendatory thereof. The full faith and credit of any such county shall be deemed to be pledged for the payment of the amounts due under said contracts and the special approval of the General Assembly of North Carolina is hereby given to the execution thereof and to the levy of a special ad valorem tax not to exceed ten cents (10¢) on the one hundred dollars (\$100.00) value of property, in addition to other taxes for general purposes authorized by law, for the special purpose of the payment of the amounts to become due thereunder. The board of aldermen of any such city is also authorized to levy, for the purposes herein provided, a special ad valorem tax not to exceed ten cents (10¢) on the one hundred dollars (\$100.00) value of property, in addition to other taxes for general purposes authorized by law. The term "board of aldermen," as used in this article, shall be deemed to include any governing body of any municipality coming within the provisions of this article by whatever name designated. (1945, c. 516, s. 1.)

§ 131-28.24. Agreement between governing bodies upon plan of hospital care.—The authority hereby granted shall be exercised only by agreement between the board of commissioners of the county and the board of aldermen of the city upon a plan of hospital care for the sick and afflicted poor of the county as herein provided. Such plan shall be embodied in a resolution, adopted by a majority vote of each board before becoming effective, and may be enlarged, diminished or altered from

time to time by a majority vote of each board not inconsistent herewith. The plan shall provide for:

- (1) The time when it shall become effective,
- (2) The election of a city-county hospital commission to administer the hospitals covered by the plan,
- (3) The respective financial obligations of the county and the city with respect to the construction of any hospitals covered by the plan and the operation of any hospitals covered by the plan, and
- (4) Such other arrangements, provisions, and details as may be deemed necessary, requisite or proper to provide adequate hospital facilities for the sick and afflicted poor of the county. (1945, c. 516, s. 2.)

§ 131-28.25. Powers and regulations; inclusion of municipal hospital within plan; limitations on payments by county.—If the governing bodies of any such county and city deem it advisable to include within the plan any existing municipal hospital or any new hospital which the city proposes to erect with the proceeds of a bond issue approved by the registered voters thereof, then in that event, the commissioners of such county are authorized to contract with the city for the construction of additional hospital facilities, over and above those to be paid for by the city with the funds derived from such bond issue and from other sources, for the hospitalization of the sick and afflicted poor of the county upon such terms and conditions as may be agreed upon and embodied in said plan by the governing bodies of the county and the city, provided the annual payments by the county to the city toward the cost of constructing such additional hospital facilities shall not exceed fifteen per cent of the total cost thereof, and provided further that the annual deficit, if any, in the operation of such hospital or in the operation of any other hospital covered by the plan for the treatment of the sick and afflicted poor of the county shall be borne and paid by the city and county in such proportion as may be agreed upon by their governing bodies. In no event shall the annual payment of the city exceed two thirds of such annual deficit. In the event a new hospital is constructed as hereinbefore provided, it shall be located within the corporate limits of the city, and the name of the hospital and the site selected and all contracts for the construction thereof shall be approved by a majority vote of the governing boards of the city and county meeting in joint session, each body voting as a unit, but in the event of disagreement the majority vote of the board of aldermen of the city shall prevail. One third of all beds in the hospitals covered by the plan shall be reserved for the treatment of the indigent sick. (1945, c. 516, s. 3.)

§ 131-28.26. City-county hospital commission.—Following the adoption of the agreement covering a plan of hospitalization for the sick and afflicted poor of the county, the county commissioners and the governing board of the city shall meet in a joint session in the county courthouse and elect a city-county hospital commission, to be composed of nine members, six of whom shall be residents of the city and three of whom shall be residents of other sections of the county. Three members of the commission shall be elected to serve for a term of two years, three for a term of four years, and three for a term of six years, and thereafter three members shall be elected biennially for a term of six years. Vacancies from any cause shall be filled by the two governing bodies meeting in joint session.

The mayor of the participating city shall be chairman and the chairman of the board of commissioners of the county shall be vice-chairman. At the first meeting, the commission shall elect a secretary who need not be a member of the commission. The commission shall meet at least once a month and special meetings may be called by the chairman at such other times as he may designate. It shall be the duty of the chairman to call a special meeting of the commission upon written request of a majority of the members thereof. The secretary shall keep written minutes of all meetings of the commission and report to the governing bodies. The members of the commission shall serve without compensation.

The city-county hospital commission shall make recommendations to the county commissioners of the county and the board of aldermen of the city regarding the operation of any hospital covered by the city-county hospital plan or system and shall discharge such other duties as the county commissioners of the county and the board of aldermen may impose upon the commission. In addition, such commission shall have all powers and discharge all duties now vested in any hospital commission of any such city by the ordinances or charter thereof not inconsistent herewith.

Not later than June first of each year the city-county hospital commission shall prepare and submit to the governing bodies of the county and city a proposed budget for the operation and maintenance of each hospital covered by the plan agreed upon by the governing bodies of the city and county. On or before June fifteenth of each year, the county commissioners and the board of aldermen shall adopt in a joint meeting the budget under which the several hospitals covered by the plan shall operate during the next fiscal year. (1945, c. 516, s. 4.)

§ 131-28.27. Superintendent of hospitals.—At a joint meeting of the board of commissioners and the board of aldermen, at which the city-county hospital commission is elected, there shall also be elected a superintendent of hospitals to serve for a term of twelve months. The compensation of the superintendent and of the personnel of the several hospitals covered by the plan shall be fixed by the commissioners of the county and the board of aldermen of the city in a joint meeting. The superintendent shall be subject to removal by the commissioners and by the board of aldermen at will in joint meeting, provided two thirds of the membership of both boards vote in favor of such removal.

The superintendent of hospitals shall have supervision of the operation of the hospitals covered by the plan and shall have the powers now prescribed by the ordinances of the city and he shall likewise enforce all rules and regulations prescribed by the governing bodies of the county and the city. (1945, c. 516, s. 5.)

§ 131-28.28. Revenue.—The board of commissioners of the county and the board of aldermen of the city are hereby respectively authorized and empowered to levy a tax on property in addition to other taxes for general purposes, not to exceed ten cents (10¢) on the one hundred dollars (\$100.00) value of property annually, to provide hospital care for the sick and afflicted poor of the county and the city. All revenue so derived shall be carried by each governing body as a separate fund and expenditures for such purpose shall be charged respectively against such fund. Other revenues received from the operation of the hospitals covered by the plan shall be carried in the same funds. The funds of the county and the city for the operation and maintenance of such hospital facilities shall be applied by the governing bodies toward the payment of any annual deficit arising from the treatment of the sick and afflicted poor in any of the hospitals covered by the plan agreed upon by the governing bodies, subject to the limitations hereinbefore provided, and shall be disbursed by the finance officer of the city on vouchers approved by the superintendent of hospitals, provided appropriations for such expenditures have been made and a sufficient balance is available. All purchases shall be made through the purchasing department of the city. The portion of the funds charged to the county shall be paid not later than thirty days from the close of each fiscal year to the finance officer of the city, to be applied as hereinbefore provided.

The governing bodies of the county and city meeting in joint session shall set aside each year out of the hospital plan revenues a sum not to exceed ten per cent of the original cost of the hospital plants covered by the plan, including land, buildings and equipment, for future expansion and modernization of buildings and appurtenances, the funds so set aside to be deposited with the sinking fund commission of the city and kept separate by it from other funds handled by it, and the investments of such funds to be governed by the laws pertaining to the city sinking funds. The expenditure of all or any part of said accumulated funds shall be made

upon recommendation of the city-county hospital commission to both governing bodies, meeting in joint session.

In anticipation of the annual payments to be made by the county toward the cost of constructing the additional facilities hereinbefore referred to, the city is authorized to advance such additional funds and if necessary to issue its short-term securities for that purpose. If such short-term securities are issued by the city, interest thereon shall be paid by the county. (1945, c. 516, s. 6.)

ARTICLE 3.

County Tuberculosis Hospitals.

§ 131-29. Power to establish.—Any county within the State shall have power and authority at any time to establish, erect, and maintain a hospital for the care and treatment of persons suffering with the disease known as tuberculosis, as herein-after provided in this article. (1917, c. 99, s. 1; C. S., s. 7279.)

Proceedings under Local Act Conflicting with Article.—As to invalid proceedings under local act conflicting with this article, see *Armstrong v. Board*, 185 N. C. 405, 117 S. E. 388 (1923), distinguishing *Proctor v. Board*, 182 N. C. 56, 108 S. E. 360 (1921).

§ 131-30. Election for bond issue; special tax.—The board of county commissioners of any county in the State may, by majority vote of the board, or upon petition of one fourth of the freeholders of the county shall, after thirty days' notice at the courthouse door and publication in one or more newspapers published in the county, order an election to be held at the next general election, or order a special election to be held at such time as they may fix, to determine the will of the people of the county whether there shall be issued and sold bonds to an amount not to exceed two hundred and fifty thousand dollars, to bear interest at such rate as the board may fix and to be payable, both principal and interest, when and where they may decide, the proceeds of the bonds to be used in securing lands and erecting or altering buildings and equipping same to be used as a hospital for the treatment of tuberculosis. If the majority of the qualified voters at said election shall vote in favor of the issuing of such bonds, then the bonds shall be issued and sold by the board and a special tax shall be levied to pay the interest and to provide a sinking fund to pay the bonds at maturity. The board of commissioners are also authorized to levy a special annual tax not to exceed ten cents on the one hundred dollars valuation of property and fifteen cents on the poll to be used as a maintenance fund for the hospital for tuberculosis. The question of levying such special tax shall be submitted to the qualified voters of such county at an election to be held as hereinbefore provided. In the event the board of commissioners shall order a special election to determine the will of the people of the county upon the question of the issuance of the bonds or the levy of the special maintenance tax as herein provided, they may order a new registration of the qualified voters of the county for said election, and notice of said new registration shall be deemed to be sufficiently given by publication once in some newspaper published in said county at least thirty days before the close of the registration books. If both questions are submitted at the same election, only one registration need be ordered. The published notice of registration shall state the days on which the books will be open for registration of voters and the places at which they will be open on Saturdays. The books of such new registration shall close on the second Saturday before election. The Saturday before the election shall be challenge day. The election shall be conducted in the manner prescribed in §§ 163-70 to 163-77, 163-148 to 163-187. (1917, c. 99, s. 2; 1919, c. 159, s. 2; C. S., s. 7280; Ex. Sess. 1924, c. 47; 1925, c. 75; 1927, c. 34, s. 2; 1929, c. 164; 1937, c. 197; 1939, c. 290.)

Editor's Note.—The 1924 amendment inserted the provision for holding a special election. The 1925 and 1927 amendments increased the bond limit. And the 1937 and 1939 amendments increased the maximum tax rate authorized in the third sentence.

§ 131-31. Board of managers; term of office; compensation.—For each hospital so established, the board of county commissioners shall, by a majority vote, elect a board of managers to consist of five members, of whom one shall be a member of said board of commissioners and shall be chairman of said board of managers. None of the remaining four members of said board of managers shall be a member of the board of commissioners. The chairman of said board of managers shall be elected for a term of two years, and the other members of said board of managers shall be elected for terms of four years each: Provided, that at the first election of said board of managers the chairman shall be elected for a term equal to the unexpired portion of his term as a member of the board of commissioners, and of the remaining members of said board of managers one member shall be elected for a term of one year, one member for a term of two years, one member for a term of three years, and one member for a term of four years: Provided, also, that any vacancy in said board, occurring at any time, shall be filled by the board of commissioners for the unexpired term. In all counties having a health officer, such health officer, in addition to the five elected members, shall be ex officio a member of such board of managers. Women shall be eligible to said board of managers. The compensation of the members of said board of managers shall be the same as that of the members of the board of commissioners: Provided, that in counties in which the chairman of the board of commissioners receives a fixed salary, and the remaining members of said board are compensated upon the basis of per diem and mileage, the compensation of the members of the board of managers shall be equal to that of the members of the board of commissioners, paid upon a per diem and mileage basis. The chairman of the board of managers shall be entitled to the same compensation as other members of said board, in addition to his compensation as a member of the board of commissioners. The county health officer, however, shall not receive compensation as a member of said board of managers: Provided, that this section shall not affect the present term of office of any member of a board of managers elected prior to the passage of this section, but as to such members this section shall become effective as their present terms of office, respectively, shall expire. (1917, c. 99, s. 4; C. S., s. 7282; 1925, c. 313, s. 1.)

Local Modification.—Guilford: 1945, c. 135.

§ 131-32. Powers of board; title to property.—Authority in regard to the purchase of lands, erection and maintenance of buildings, selection of officers, employees, and attendants, formulation of rules and regulations for the admission and government of patients, and general conduct of the hospital, shall vest in the board of managers. No one related by blood or marriage to any member of the board of managers shall be appointed to any office or position in connection with the hospital, except by unanimous vote of the board of managers. All property, both real and personal, pertaining to such hospital, shall be vested in the county: Provided, however, that any donations, bequests, or devises made for the use of such hospital shall be held by the county in trust according to the terms of such donation, devise, or bequest. Provided, that the board of commissioners, in their discretion, either may appoint the board of managers following the official determination of the election, in which event said board of managers shall have the sole authority as to the selection of a site for such hospital, the purchase of lands therefor, and the erecting and equipping of the buildings for such hospital; or the said board of commissioners may defer the appointment of said board of managers until such hospital is constructed, in which event said board of commissioners shall, themselves, select the site for such hospital, purchase lands therefor, erect and equip, or make contracts for erecting and equipping the buildings for such hospital, and shall thereafter turn such hospital over to said board of managers to be operated and maintained in accordance with this article. (1917, c. 99, s. 5; C. S., s. 7283; 1925, c. 313, s. 2.)

§ 131-33. Contract power; regulations for admission.—The board of county commissioners, or the board of managers, according to the authority vested in them by the board of county commissioners or by this article, shall have power and authority to purchase property, both real and personal, to make contracts, to formulate, change, and alter rules and regulations for the admission and government of patients, and to do all things reasonably incidental or necessary to carry out the true intent and purpose of this article. Patients may be admitted and kept without charge or for such compensation as may be deemed just and proper in each particular case: Provided, that no person who is not a bona fide resident of the county maintaining such hospital shall be kept for less than actual cost. The county commissioners of any county may, instead of erecting the institution in the county where the vote is taken, use a part or all of the funds in erecting and maintaining a building or buildings at the State Sanatorium at Montrose, or the county commissioners may in their discretion erect and maintain a tuberculosis hospital in the county where the bonds are issued, and may also use part of the funds to erect and maintain a building or buildings at Montrose, as they may deem best. Before erecting any building or buildings at Montrose the county commissioners shall make due arrangements and enter into the necessary contract or contracts with the board having charge of the State Sanatorium at Montrose. And the board having in charge the State Sanatorium at Montrose is hereby authorized and empowered to make contracts with any county in the State, specifying the terms upon which such building or buildings may be erected and making such arrangements as it may deem wise for the maintenance of such buildings and the care and support of such county patients. In case the board of commissioners of any county, or the people of any county, do not decide to issue bonds for the erection of such hospital, but do decide to levy the special tax provided for in § 131-30, they may make arrangements with the board having in charge the State Sanatorium at Montrose for the maintenance and care of tubercular patients of such county. (1917, c. 99, s. 6; 1919, c. 159, s. 3; C. S., s. 7284; 1921, c. 178; 1925, c. 313, s. 3.)

§ 131-33.1. Discontinuance of hospitals.—Whenever the governing body operating a hospital as provided in this article determines that it is unnecessary to continue the operation of such hospital because the need for it ceases to exist, the governing body may adopt a resolution to such effect and thereupon discontinue operating such county tuberculosis hospital. Upon discontinuing the operation of such hospital, the board of county commissioners is authorized to make such use or disposition of the hospital properties as, in the opinion of the board of county commissioners, would best serve the public interests of the county. (1957, c. 1353.)

§ 131-33.2. Conversion of tuberculosis hospital to other uses; approval by voters; change of name.—If the board of commissioners of any county maintaining a county tuberculosis hospital under the provisions of this article exclusively for the care and treatment of persons suffering from tuberculosis shall determine by a majority vote of the board that the operation and maintenance of such hospital for such purpose is no longer desirable or necessary, such board of commissioners is hereby authorized and empowered to convert such hospital to any one or more of the following hospitals or facilities: General hospital; hospital or medical institution for the treatment of specific diseases, illnesses or deformities; institution for the care and treatment of the chronically ill or convalescent patients; nursing home or other similar institution or facility; provided, however, that such conversion shall be approved by a majority of the qualified voters of the county voting on such question at any general election or at any special election called by the board of commissioners for such purposes. If such conversion is approved by the voters the board of commissioners may change the name of such county tuberculosis hospital to such name as the board may select. (1959, c. 623.)

§ 131-33.3. Use of funds for maintenance of converted hospital or facility; special tax levy authorized; approval of tax levy by voters.—The board of

commissioners of any county so converting any such hospital is hereby authorized and empowered, in its discretion and to the extent permitted by law, to pledge, encumber or appropriate funds from any surplus funds, unappropriated funds, or funds derived from profits of Alcoholic Beverage Control Stores, for the operation and maintenance of the hospital or facility to which such hospital is converted. The board of commissioners is also authorized and empowered to levy a special annual tax not to exceed ten cents (10¢) on the one hundred dollars (\$100.00) valuation of property, the proceeds of such tax to be used for an operation or maintenance fund or for capital improvements to such hospital or facility, and any such tax shall be in addition to any other tax authorized or levied for such purpose; provided, however, that the levy of such special tax shall be approved by a majority of the qualified voters of the county voting on such question at any general election or at any special election called by the board of commissioners for such purpose. The special approval of the General Assembly is hereby given to the levy of such special tax. (1959, c. 623.)

§ 131-33.4. Elections for conversion or special tax levy; declaring results; asserting invalidity of election.—Any election held on the question of converting a county tuberculosis hospital as hereinabove authorized, or for levying any such special tax shall be held in accordance with the applicable provisions of chapter 163 of the General Statutes; provided, however, that the board of commissioners shall prepare a statement showing the number of votes cast for and against any such question submitted and the number of voters qualified to vote in any such election, and declaring the result of the election, which statement shall be signed by a majority of the members of the board of commissioners and delivered to the clerk, who shall record it in the minutes of the board, and file the original in his office and publish it once. No right of action or defense founded upon the invalidity of any such election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever, except in any action or proceeding commenced within thirty days after the publication of such statement or result. (1959, c. 623.)

§ 131-33.5. Issuance of bonds and anticipation notes; approval by voters; submission of several questions at same time.—Subject to the approval by the vote of a majority of the qualified voters of any county who shall vote thereon at any general or special election called for such purpose the board of commissioners of any county converting its tuberculosis hospital as herein provided is hereby authorized and empowered to issue bonds of the county then or at any time thereafter for the purpose of erecting additional buildings or facilities, improving, remodeling or enlarging existing buildings and facilities, and acquiring necessary land and equipment, and to levy property taxes for the payment of such bonds and the interest thereon, and the special approval of the General Assembly is hereby given to the issuance of such bonds and the levy of such taxes. Any bonds so voted and any bond anticipation notes that may be issued to anticipate the receipt of the proceeds of such bonds shall be issued in accordance with the provisions of the County Finance Act, as amended, and the Local Government Act, as amended. The question of approving such conversion, the question of levying a special tax for operation, maintenance and capital improvements, and the question of issuing bonds under the provisions of this article may be submitted at the same election; provided, however, that no such special tax shall be levied nor any such bonds or notes issued unless such conversion is approved by the voters. (1959, c. 623.)

§ 131-33.6. Board of managers for converted hospital or facility; property vested in county.—If the conversion of a county tuberculosis hospital is approved by the voters, the board of commissioners of such county shall, by a majority vote, elect a board of managers of the converted hospital or facility as provided in § 131-31 of the General Statutes for the election of boards of managers for county tuberculosis hospitals, and such board of managers shall serve for the terms and

receive such compensation as is provided in said section of the General Statutes, and shall have all of the powers and duties and be subject to all of the limitations, to the extent applicable, contained in this article for board of managers of county tuberculosis hospitals; provided, however, that all property, both real and personal, pertaining to any such hospital shall be vested in the county in which the converted hospital or facility is located. (1959, c. 623.)

§ 131-33.7. Powers granted by §§ 131-33.2 to 131-33.6 are additional to other powers.—The powers granted by §§ 131-33.2 to 131-33.6, inclusive, are in addition to and not in substitution for any other powers heretofore or hereafter granted to counties for the conversion of county tuberculosis hospitals to any other purposes. (1959, c. 623.)

ARTICLE 4.

Joint County Tuberculosis Hospitals.

§ 131-34. Authorization.—Any group of counties within the State of North Carolina shall have power and authority at any time hereafter to establish, erect, and maintain a hospital for the care and treatment of persons suffering with the disease known as tuberculosis, as hereinafter provided in this article. (1925, c. 154, s. 1.)

Local Modification.—Edgecombe, Halifax and Martin: 1927, c. 58.

§ 131-35. Vote on bond issue.—The boards of commissioners of each such group of counties in North Carolina may, by majority vote of said boards, or upon petition of five per cent (5%) of the freeholders of said counties, shall, after thirty days' notice at the courthouse door of each of the counties and publication in one or more newspapers published in each of said counties, order an election to be held at the next general election, or order a special election to be held at such time as they may fix, to determine the will of the people in each of the counties in the group whether there shall be issued and sold bonds to an amount not to exceed two hundred thousand dollars (\$200,000) for each county in the group, to bear interest at such rate as said boards may fix and to be payable, both principal and interest, when and where they may decide. The proceeds of said bonds shall be used in securing lands and erecting or altering buildings and equipping same to be used as a hospital for the treatment of tuberculosis. The election shall be conducted in the manner prescribed in §§ 163-70 to 163-77, 163-148 to 163-187. If the majority of the qualified voters in each county of the group at said election shall vote in favor of the issuing of said bonds, then said bonds shall be issued and sold by said boards and a special tax shall be levied to pay the interest on said bonds and provide a sinking fund to pay said bonds at maturity. Said boards of commissioners are hereby also authorized to levy a special annual tax not to exceed five cents (5¢) on the one hundred dollars (\$100.00) valuation of property and fifteen cents (15¢) on the poll to be used as a maintenance fund for said hospital for tuberculosis. (1925, c. 154, s. 2; 1929, c. 164.)

Local Modification.—Edgecombe, Halifax and Martin: 1927, c. 58.

§ 131-36. Board of managers.—For each hospital so established there shall be elected a board of managers, consisting of two members from each county in the group and of one member at large. The two members from each county shall be elected by a majority vote of their respective board of county commissioners, and the one member at large shall be elected from any one of the counties in the group at a meeting of and by a majority vote of the combined boards of commissioners of the several counties in the group. The member at large shall hold office for two years and the other members shall hold office for four years where there are only two counties in the group, and for six years where there are more than two counties in

the group, unless sooner removed for cause by the combined boards of commissioners of the several counties in the group: Provided, that the commissioners of all the counties of the group at a joint meeting shall determine the length of the term of office of the various members of the board of managers first elected; one member to serve one, two, three and four years, respectively, if there are only two counties in the group; one member to serve one, two, three, four, five and six years respectively, if there are three counties in the group; one member to serve for one, two, three and four years, respectively, and two members to serve for five and six years, respectively, where there are four counties in the group; one member to serve for one year, and one for two years, and two members for three, four, five and six years, respectively, where there are five counties in the group: Provided, also, that any vacancies in such board may be filled by the boards of county commissioners for the unexpired term, unless the vacancy is for the office of member at large, in which case the vacancy shall be filled for the unexpired term by the commissioners of all the counties of the group at a joint meeting. In all counties having health officers, such health officer shall, in addition to the other members, be ex officio members of such board of managers. Women shall be eligible for election to such board of managers. The compensation for such board shall be the same as that of the county commissioners. (1925, c. 154, s. 4.)

§ 131-37. Authority of board.—Authority in regard to the purchase of lands, erection and maintenance of buildings, selection of officers, employees and attendants, formulation of rules and regulations for the admission and government of patients, and general conduct of the hospital, shall vest in the board of managers; no one related by blood or marriage to any member of the board of managers shall be appointed to any office or position in connection with the hospital, except by unanimous vote of the board of managers; all property, both real and personal, pertaining to such hospital shall be vested jointly in the counties of the group: Provided, however, that any donations, bequests, or devises made for the use of such hospital shall be held by the counties in the group in trust according to the terms of such donation, devise, or bequest. (1925, c. 154, s. 5.)

§ 131-38. Purchasing property; charges.—The boards of county commissioners of the group, or the board of managers, according to the authority vested in them by the boards of county commissioners of the group or by this article, shall have power and authority to purchase property, both real and personal, to make contracts, to formulate, change, and alter rules and regulations for the admission and government of patients, and to do all things reasonably incidental or necessary to carry out the true intent and purpose of this article. Patients may be admitted and kept without charge or for such compensation as may be deemed just and proper in each particular case: Provided, that no person who is not a bona fide resident of the counties maintaining such hospital shall be kept for less than actual cost. (1925, c. 154, s. 6.)

ARTICLE 5.

County Tuberculosis Hospitals; Additional Method of Establishment.

§ 131-39. Additional method of establishing; election.—The board of commissioners for each county in the State shall have power to cause to be held in their county an election wherein this article shall be submitted to the qualified voters of said county for their approval or disapproval. Said election shall be in all respects, as nearly as may be, held and conducted conformably to the rules for the election of members of the General Assembly. The said board of commissioners shall provide registration and polling books, and shall publish due notice of said election. They shall cause a new registration of voters to be made for said election, and shall publish due notice of the time and place for such registration to be made, and of the time when challenges of such registered voters may be made, all of which shall conform

as near as may be, to the general laws regulating the election of members of the General Assembly. The form of the ballot shall be as prescribed in § 163-155, subsec. (e). If in said election a majority of the voters of said county registered for said election vote for said county tubercular hospital, then this article and the following provisions thereof shall thenceforth be in full force and effect in said county; but if in said election a majority of the said registered voters shall not vote for said county tubercular hospital, then the provisions of this article shall be in no further force and effect in said county. (1927, c. 208, s. 1; 1929, c. 164.)

§ 131-40. Appointment of trustees; vacancies; terms of office.—In the event said election shall have been carried in favor of said county tubercular hospital, the board of commissioners for the county in which election shall have been held shall within thirty days after a declaration of such result of such election, appoint a board of trustees for said county tubercular hospital, consisting of twelve residents of said county, three of whom shall be physicians regularly practicing in said county, and three others of said trustees shall be women. Said trustees shall be appointed in four classes, one class to serve for one year, another for two years, another for three years, and the other for four years; thereafter as their successors are appointed or elected, the term of office of such successors, except unexpired vacancies, shall be for four years. The successors of such trustees shall be appointed by the chairman of the board of commissioners for said county, the county superintendent of health, the clerk of the superior court of said county, and the mayor of the municipality constituting the county seat of said county acting jointly, and by a majority vote. Vacancies in the offices of such trustees shall be filled by the same body of public officers last mentioned. (1927, c. 208, s. 2.)

§ 131-41. Meeting for qualification and organization; expenditures; care of property.—These said trustees shall within ten days after their appointment meet and qualify by taking the oath of civil officers, and organize their board by the election of one of their members as chairman, and one as secretary, and by the election of such other officers as may be necessary. The treasurer of the county for which said trustees are appointed shall be treasurer of the said board of trustees, and such treasurer shall receive and pay out all moneys under the control of said board as directed by it, but shall receive no compensation from said board, and no trustee shall receive any compensation whatsoever for services performed as such trustee. Said board of trustees shall make and adopt such bylaws, rules and regulations for their own guidance and the government of the said hospital, as it may deem proper, not inconsistent with this article. It shall have the control of the expenditure of all moneys collected to the credit of the hospital, including the proceeds from the sale of such bonds, hereinafter mentioned, and said board of trustees shall have the supervision, care and custody of the grounds, buildings and rooms purchased, constructed, leased or set apart for the purposes of such hospital, and they may employ such assistants, including a superintendent and matron and such other employees as they may deem necessary for the operation of said hospital, insofar as funds available for such purposes will permit. (1927, c. 208, s. 3.)

§ 131-42. Counties to issue bonds.—The board of commissioners for any county in which this article shall have been approved as aforesaid shall issue bonds of said county in an amount not to exceed the principal sum of two hundred fifty thousand dollars (\$250,000.00), for the purpose of purchasing a site, constructing the necessary buildings, and equipping said hospital with the necessary equipment. Such bonds shall be payable at such time or times not to exceed forty years from the date thereof, and at such place or places and bear such rate of interest not to exceed six per cent per annum and be of such denominations as the board of commissioners for said county may in its discretion determine. Said bonds shall be sold by the said board of commissioners at public or private sale at not less than par, as said board may determine. Said bonds shall be signed by the chairman of the said

board of commissioners, and bear the impressed seal of the said board, attested by the clerk of the said board; the interest coupons shall bear the lithographed or engraved facsimile of the signature of the said clerk of said board. The proceeds of the sale of said bonds as received shall be at once deposited by the said board of commissioners with the treasurer of said county, to the credit of said board of trustees for said county tubercular hospital; the official name of said board of trustees shall be "Board of Trustees for the County Tubercular Hospital," the name of the county for which said board is appointed to be inserted in the blank space. (1927, c. 208, s. 4.)

§ 131-43. Special tax for bonds.—The board of commissioners for any county issuing bonds under this article shall annually levy an ad valorem tax on the taxable property in such county sufficient to pay the interest on said bonds so issued, and provide a sinking fund for the payment of principal thereof, as the same may become due. Said board of commissioners shall further levy annually an additional tax not exceeding five cents on the hundred dollars on taxable property in said county, for the purpose of providing funds sufficient when supplementing other income of said hospital, for the necessary maintenance and operation of said hospital. Said board of commissioners for such county shall also annually levy a sufficient tax to provide a sum equivalent to that expended out of moneys raised by taxes for the maintenance of said hospital, which funds so to be provided shall be disbursed by the board of commissioners for such county in the care of indigent residents of said county ill with diseases other than tuberculosis in other hospitals in such county. (1927, c. 208, s. 5; 1943, c. 543.)

Editor's Note.—The 1943 amendment substituted in the second sentence "hundred dollars" for "dollar."

§ 131-44. Hospital erected for benefit of residents.—The hospital established under this article shall be for the benefit of the residents of the county in which it is situated who are or become sick with tuberculosis, but every such resident admitted to said hospital who is not a pauper, shall pay to such board of trustees of said hospital, or such other officers as it may designate, reasonable compensation for occupancy and attendance within said hospital, the amount thereof to be fixed by said board of trustees, and in the event a patient in said hospital is not able to pay in full, charges for treatment, but can pay some part thereof, arrangement may be made accordingly by said board of trustees in its discretion and as it deems right and just. (1927, c. 208, s. 6.)

§ 131-45. This article cumulative of existing powers.—The powers conferred by this article are conferred in addition to and not in substitution for the existing powers of counties. Any county may at its option proceed either under this article or under any other act conferring similar powers upon such county. (1927, c. 208, s. 7.)

ARTICLE 6.

Joint County and Municipal Tuberculosis Hospitals.

§ 131-46. Appropriations from revenue producing enterprises for construction and equipment.—(a) The board of commissioners of any county and/or the board of commissioners or aldermen of any municipality in such county are hereby authorized and empowered to appropriate in their discretion out of funds not derived from taxes, but from revenue producing enterprises owned by said counties and/or towns or municipalities therein, not to exceed fifty thousand dollars (\$50,000.00) of said funds so derived, for the purpose of building and equipping tuberculosis hospitals for the treatment of tuberculosis patients in said counties, towns or municipalities.

(b) The board of commissioners of any county and/or the board of commissioners or aldermen of any town or municipality are hereby authorized and empowered to appropriate in their discretion, from funds not derived from taxation, such sums as may be deemed necessary by said board or boards for the maintenance of tuberculosis hospitals. (1939, c. 293, s. 1.)

§ 131-47. Determination of name of hospital.—The name of any hospital established under the provisions of this article shall be determined by the board of managers to be hereinafter provided for. (1939, c. 293, s. 2.)

§ 131-48. Boards of managers for hospitals.—(a) For the governing and management of such hospitals, there shall be created a board of five managers. One of such board shall be elected by the county commissioners from its membership. One member of such board shall be elected by the town commissioners from its membership. The remaining three members of the board of managers shall be elected by joint vote of the boards of county and town commissioners: Provided, however, two of such remaining three members shall be licensed physicians elected by said boards of commissioners from a list of at least five nominations made by the county medical society, if there be one: Provided, further, if any such hospital be a sole enterprise of a county, or city or town, then the entire membership of the board of managers shall be elected by the board of commissioners of the governmental unit conducting such enterprise.

(b) The board of managers shall make a monthly report to the board of county and/or town commissioners and shall, on or before the first day of June of each year, file a budget with the county and/or town accountant. (1939, c. 293, s. 3.)

§ 131-49. Officers, etc.—(a) The said board of managers shall, after their appointment, meet and elect their chairman, together with a secretary and treasurer, and such other officers, employees and attendants as it may deem necessary for the administration and government of patients. The chairman of the board, as chairman, shall hold office for two years. The said secretary and treasurer, before entering upon his duties, shall give bond to the board of commissioners of the county and/or the board of commissioners of the town in an amount fixed by the said board of managers, conditioned for the faithful discharge of his official duties. The said secretary and treasurer, in the discretion of the said managers, shall be allowed and paid an amount as the said managers shall deem adequate compensation for his services as secretary and treasurer. The said board of managers, subject to the approval of governing bodies of the governmental unit maintaining such hospital, shall adopt such bylaws, rules and regulations for the governing of said tuberculosis hospital as may be expedient and in conformity with law. The said board of managers shall have control of all monies and expenditures collected by and placed to the credit of said managers of said tuberculosis hospital. All monies shall be paid out by the secretary and treasurer upon authenticated requisition of the board of managers through its president. With the consent of the said board of commissioners of the county and/or the board of commissioners of the town the said board of managers may establish, erect and maintain a tuberculosis hospital upon real estate secured or obtained by gift or purchase. The said board of managers may fix the compensation for all officers, employees and assistants and shall have power to remove such officers, employees or assistants whenever it is deemed advisable by said board of managers. The title to all property, both real and personal, given, conveyed or devised, shall be held by the county and/or town building the said hospital: Provided, however, that any donations, bequests or devises made for the use of such hospital shall be held by the county and/or town in trust according to the terms of such donations, devises or bequests. The board of managers shall have power to make contracts, to formulate, change and alter rules and regulations and government of patients and to do all things reasonable, incidental and necessary in the operation of a tuberculosis hospital.

(b) The board of commissioners of the county and/or the board of commissioners

of the town or municipality may defer the appointment of said board of managers until such hospital is constructed, in which event the said board of commissioners of the county and/or of the board of commissioners of the town or municipality shall itself select the site for such hospital, purchase lands therefor, erect and equip or make contracts for erecting and equipping the buildings for such hospital, and shall thereafter turn such hospital over to said board of managers to be operated and maintained. (1939, c. 293, s. 4.)

§ 131-50. Terms of office of members elected from local boards; county health officer to be ex officio member of board.—Membership on the board of managers of members of the board elected from boards of town or county commissioners shall coincide with their term of office as such commissioners; but shall not exceed two years. The remaining three members of the board of managers shall be elected for a term of four years each. In all counties having a health officer, such health officer, in addition to the five elective members, shall be ex officio member of such board of managers, but shall have no vote except in case of a tie. Women shall be eligible to the board of managers. The members of the board of managers shall receive no compensation. Any vacancy in said board occurring at any time shall be filled by the board or boards of commissioners making the original appointment. (1939, c. 293, s. 5.)

§ 131-51. Contracts between local units as to prorating expenses.—Counties and towns or municipalities may contract and bargain with each other with respect to prorating between said counties, towns or municipalities the expense of the erection of tuberculosis hospitals or the maintaining thereof. (1939, c. 293, s. 6.)

ARTICLE 7.

State Sanatorium for Tuberculosis.

§ 131-52. Directors of State sanatorium for tuberculosis.—The body politic and corporate existing under the name and style of the "North Carolina Sanatorium for the Treatment of Tuberculosis" shall be controlled and managed by a board of directors appointed as provided for in §§ 131-62, 131-63, and 131-64, who shall serve until their successors are appointed and qualified according to law. The Governor shall have the power to remove any member of the board whenever in his opinion it is to the best interest of the State to remove such person, and the Governor shall not be required to give any reason for such removal. (1907, c. 964; Ex. Sess. 1913, c. 40, s. 1; C. S., s. 7172; 1923, c. 96; 1925, c. 306, ss. 12, 13, 14; 1935, c. 91, ss. 2, 3, 4; 1935, c. 138, ss. 1, 2.)

Cross References.—See § 131-61 et seq. ment control was in the State Board of
Editor's Note.—Prior to the 1923 amend- Health.

§ 131-53. Powers of directors; election of officers.—The North Carolina Sanatorium for the Treatment of Tuberculosis is hereby empowered and authorized to elect and employ such officials and to pay such fees and salaries (provided the appropriation is not exceeded) as the directors shall find necessary for the proper management and maintenance of the institution; the directors shall determine the qualifications for admission of those applying as patients to the institution; the directors shall make all such bylaws and regulations for the government of the said institution as shall be necessary, among which shall be such as shall make the institution as nearly self-supporting as shall be consistent with the purpose of its creation; and the directors shall do such other things as seem reasonably necessary and incident to the proper management and maintenance of the institution. (1907, c. 964; Ex. Sess. 1913, c. 40, s. 2; C. S., s. 7173.)

§ 131-54. Indigent patients; recovery of charges from those able to pay.—The said directors in determining the qualifications for admission for those applying as patients to the institution and in making bylaws and regulations for the govern-

ing therein shall not provide or make any bylaw, regulation, or qualification for admission therein which shall exclude any patient, otherwise properly qualified for admission, on account of inability to pay for examination and treatment, or either, at said institution. All indigent patients, who otherwise are proper patients for admission in said institution when there is space and accommodation for such patients, shall be received without regard to their indigent condition; but the directors of said institution shall require of all patients who are able, including those having persons upon whom they are legally dependent who are able, to pay the reasonable cost of treatment and care of said institution and they shall make such bylaws and regulations as shall most equitably carry out the directions contained in § 131-53. In case those persons upon whom patients are legally dependent or patients not indigent shall refuse to pay such charges for treatment and care, then said directors are authorized and empowered to institute an action in the name of the said Sanatorium in the Superior Court of Hoke County for the collection thereof, and if the amount so charged is less than two hundred dollars (\$200), then said action shall be instituted in the county where the defendant resides in a court having jurisdiction thereof; and upon said trial the charges so made shall be collectible, as upon express promise to pay the same. Provided, that nothing in this section shall be interpreted to conflict with or interfere with the provisions contained in § 131-60. (1924, c. 86, s. 1; 1925, c. 291; 1939, c. 332; 1955, c. 287, ss. 1, 2; 1957, c. 1246.)

Cross References.—As to care of tubercular prisoners, see § 130-115 et seq.

Editor's Note.—The 1955 amendment changed parts of the section now deleted.

The 1957 amendment deleted a provision relating to acquiring a settlement in the

State as a prerequisite to the admission of indigent patients. It also deleted a provision as to the admission on a cost basis of persons living on property under federal jurisdiction.

§ 131-55. Bureau for tuberculosis, register of tuberculous persons.—The directors shall equip, operate, and maintain a bureau for tuberculosis, located in their office in Raleigh, to which bureau the reports of cases of tuberculosis, as hereinafter provided, shall be made; and the bureau of tuberculosis shall keep a register of all persons in this State known to be afflicted with tuberculosis. The bureau shall have exclusive control of such register and shall not permit the inspection thereof, nor disclose any of its personal particulars, except to representatives of municipal or county governments, the State government, or organizations, orders, churches, or corporations interested in and contemplating making financial provision in the institution for the care and treatment of afflicted citizens or members of their respective organizations, orders, churches, or corporations. (Ex. Sess. 1913, c. 40, s. 3; C. S., s. 7174.)

§ 131-56. Bureau to maintain correspondence school.—The bureau of tuberculosis shall develop and maintain a correspondence school with those of the State's tuberculous population, to the end that the tuberculous population of this State shall be properly advised and directed both as to methods for obtaining cures and as to methods for preventing the spread of the disease to other persons. (Ex. Sess. 1913, c. 40, s. 4; C. S., s. 7175.)

§ 131-57. Cases of tuberculosis reported to bureau.—All physicians and the executive officers of every private or public hospital, institution for the treatment of disease, or dispensary shall report, on blank forms and in accordance with the instructions of the bureau of tuberculosis, the names and other particulars of all persons afflicted with tuberculosis whom they are called upon to examine or treat or who are to be examined or treated in the hospital, institution, or dispensary of which he or she is the executive head, within seven days after the disease is recognized by such physician or executive officer. Any violation of this section shall be a misdemeanor and subject to a fine of not less than ten dollars nor more than one hundred dollars, and the judge, in addition to imposing the said fine, may, upon the evidence produced in the trial or upon such further evidence as may be produced before him,

find and cause to be entered upon the records of the court that the physician deliberately and falsely diagnosed the disease, tuberculosis, as some other disease in order to avoid the requirements of this section, and the North Carolina Board of Medical Examiners upon such record shall revoke the license of such physician. Nothing in this section shall abrogate the rights and powers of municipalities and counties to require the reporting of cases of tuberculosis by physicians to the local authorities; but municipalities and counties may, when desired, in lieu of such reports by physicians, call upon the bureau of tuberculosis for notification of cases of tuberculosis reported to the bureau from the municipality or county. (Ex. Sess. 1913, c. 40, s. 5; C. S., s. 7176.)

§ 131-58. Directors may receive gifts for sanatorium.—The directors shall be empowered to receive or accept the gifts or donations for the benefit of the State sanatorium, and the directors shall, in their discretion, use the same for carrying out the purpose for which the sanatorium is established. (1907, c. 964, s. 14; Ex. Sess. 1913, c. 40, s. 6; C. S., s. 7177.)

§ 131-59. Pay of directors.—Each director shall be entitled to receive, as compensation and expenses, the sums authorized in the biennial appropriations acts. (1907, c. 964, s. 15; Ex. Sess. 1913, c. 40, s. 7; C. S., s. 7178.)

§ 131-60. Indigent tuberculous to be treated at State sanatorium.—Any city or town in the State of North Carolina through its board of aldermen, town council, or other governing body, and any county in the State, through its board of commissioners, is hereby authorized and empowered to provide for the treatment of any tubercular person or persons resident in, and who is a bona fide citizen of, said city, town, or county, at the North Carolina Sanatorium for the Treatment of Tuberculosis, and pay therefor to the North Carolina Sanatorium for the Treatment of Tuberculosis an amount which shall not be more than one dollar per day per patient. (1915, c. 181, s. 1; C. S., s. 7179.)

ARTICLE 8.

Western North Carolina Sanatorium.

§ 131-61. Tubercular sanatorium established in western North Carolina.—There shall be established in western North Carolina in the manner hereinafter set out a sanatorium for the treatment of persons afflicted with tuberculosis. (1935, c. 91, s. 1.)

§ 131-62. Control of both tubercular sanatoriums vested in one board.—Control of said sanatorium and the control of the "North Carolina Sanatorium for the Treatment of Tuberculosis" established under the provisions of § 131-52 et seq., shall be vested in a board of directors composed of twelve members to be appointed by the Governor of North Carolina and approved by the State Senate of the session of the General Assembly of one thousand nine hundred and thirty-five. (1935, c. 91, s. 2; 1935, c. 138, s. 1.)

§ 131-63. Terms of directors; ex officio director.—The said board of directors shall be divided into three classes of four directors each, the first class to serve for a period of two years, the second class for a period of four years and the third class for a period of six years, and at the expiration of the terms of the several classes, shall be appointed for a period of six years. The State Health Director shall be ex officio a member of the board of directors. (1935, c. 91, s. 3; 1935, c. 138, s. 2; 1957, c. 1357, s. 19.)

Editor's Note.—The 1957 amendment, effective January 1, 1958, substituted in the last sentence "State Health Director" for "secretary of the North Carolina State Board of Health."

§ 131-64. Vacancy appointments.—In case of a vacancy or vacancies in the board of directors for any cause, their successor or successors shall be appointed

by the Governor, and their appointment will be reported to the next succeeding session of the Senate of the General Assembly of North Carolina for confirmation. (1935, c. 91, s. 4.)

§ 131-65. Directors incorporated.—The said board of directors shall be, and they are hereby constituted a body politic and corporate, under the name and style of the "Western North Carolina Sanatorium for the Treatment of Tuberculosis," and upon them, as such, are hereby conferred all the duties, powers, privileges and obligations incident to bodies corporate. (1935, c. 91, s. 5.)

§ 131-66. Organization of directors; acquisition of site, etc.—Said board of directors are hereby given full power and authority to meet and organize and from their number select a chairman to purchase a site or sites in Western North Carolina, to purchase, renovate, remodel or erect buildings and provide such apparatus and equipment as may be necessary to establish said sanatorium and prepare it for the reception of patients. (1935, c. 91, s. 6.)

§ 131-67. Superintendent.—The board of directors shall have the power to elect a superintendent and prescribe his duties. The said superintendent shall be a skilled physician, trained and experienced in the treatment of tuberculosis, of good moral character, and good business habits, and otherwise qualified to discharge the duties of his office. He shall hold office for a period of two years from and after the date of his election, unless sooner removed therefrom by the board for incompetence or misconduct in office, and shall keep a record of his transactions and duly enter the same in a book or books for that purpose. (1935, c. 91, s. 7.)

§ 131-68. Subordinate officers and employees.—Said superintendent shall employ such subordinate officers and employees of said sanatorium as may be necessary, and fix their compensation, subject to the approval of said board, and within the appropriation made to said institution; the said superintendent shall have the power to discharge any of the employees for incompetence or misconduct in office, and his proceedings in regard to any act of this character shall be reported to the said board of directors. (1935, c. 91, s. 8.)

§ 131-69. Reports of superintendent; board meetings; reports to legislature. The superintendent shall make monthly reports to the chairman of the board of directors, clearly setting forth the conditions and workings of the institution, and upon receipt of said report, said chairman shall have the authority to convene said board if, in his discretion, he deems it necessary to do so. Said superintendent shall make a detailed report of the conditions and workings of the institution every three months to the board of directors, and he shall annually make a detailed report to the Governor of North Carolina. The board of directors shall be required to hold meetings of their board every three months or oftener if the chairman of said board shall call them together, and the said board shall be required to make biennial reports of the conditions and workings of the hospital to the Governor and General Assembly. (1935, c. 91, s. 9.)

§ 131-70. Executive committee.—The board of directors shall at their first meeting select from their number an executive committee composed of the chairman of said board and two other members, who, in the absence of the board of directors, shall have the direction of the affairs of said hospital. The successors to the members of the executive committee and the manner and time of their election shall be provided by the bylaws and regulations made for the said institution. (1935, c. 91, s. 10.)

§ 131-71. Bylaws and regulations.—The board of directors shall make all bylaws and regulations for the government of said institution as shall be necessary, among which regulations shall be such as shall make said sanatorium as nearly self-supporting as shall be consistent with the purpose of its creation. (1935, c. 91, s. 11.)

§ 131-72. **Gifts and grants from governments or agencies; bond issues.**—In addition to the powers generally granted to bodies corporate in North Carolina, the "Western North Carolina Sanatorium for the Treatment of Tuberculosis" shall have and is hereby granted authority to receive gift or grant from the United States government or any other agency or government, and shall have the right by vote of the board of directors, approved by the Treasurer of the State of North Carolina, to issue bonds of said institution payable solely out of the receipts or revenues of any undertaking engaged in or undertaken by said board for which said bonds were issued, but shall not have the right to pledge any property of the institution or to make said bonds an obligation of said institution further than the revenue derived from the projects for which the bonds were issued, and said bonds so issued shall not be a charge upon the general property of the Western North Carolina Sanatorium for the Treatment of Tuberculosis, nor any obligation of the State of North Carolina. (1935, c. 91, s. 12.)

§ 131-73. **State Treasurer as treasurer of sanatorium.**—The Treasurer of the State of North Carolina shall be ex officio treasurer of said corporation and shall keep all accounts of said sanatorium and pay out all monies to its credit in the way and manner as now or hereafter may be provided by law for the disbursement of funds of the State of North Carolina specifically allotted to any institution or for any specified purpose. (1935, c. 91, s. 13.)

§ 131-74. **Gifts and donations for benefit of sanatorium.**—The said board of directors shall be empowered to receive or accept gifts or donations for the benefit of said sanatorium which shall be used by said board in their discretion for the purpose of carrying out the work for which the sanatorium is established. (1935, c. 91, s. 16.)

§ 131-75. **Pay of directors.**—Each member of the board of directors shall be entitled to receive as compensation and expenses the sums fixed by the biennial appropriations acts. (1935, c. 91, s. 17.)

ARTICLE 9.

Eastern North Carolina Sanatorium.

§ 131-76. **Establishment of Eastern North Carolina Sanatorium for Treatment of Tuberculosis.**—There shall be established in eastern North Carolina, in the manner hereinafter set out, a sanatorium for the treatment of persons afflicted with tuberculosis, to be known as the "Eastern North Carolina Sanatorium for the Treatment of Tuberculosis." (1939, c. 325, s. 1.)

§ 131-77. **Control of sanatorium by board of directors.**—The control of said sanatorium authorized by the provisions of this article shall be vested in the board of directors appointed by the Governor of North Carolina under the provisions of § 131-62 and their successors in office. (1939, c. 325, s. 2.)

§ 131-78. **Powers of directors as to erection, organization, operation, etc., of sanatorium.**—The said board of directors are hereby given full power and authority, subject to the provisions of this article, to erect, organize, operate, supervise, manage and maintain the said Eastern North Carolina Sanatorium for the Treatment of Tuberculosis, and there is hereby conferred upon the said board with respect to such sanatorium the same duties, powers, privileges, authority and obligations which the said board now has in connection with the operation and management of the North Carolina Sanatorium for the Treatment of Tuberculosis and the Western North Carolina Sanatorium for the Treatment of Tuberculosis, including the power to elect a superintendent and prescribe his duties, and to do all things needful in connection with the erection, operation, management and control of such sanatorium. (1939, c. 325, s. 3.)

§ 131-79. **Bylaws and regulations.**—The said board of directors shall make all bylaws and regulations for the government of said sanatorium as shall be necessary, among which regulations shall be such as shall make said sanatorium as nearly self-supporting as shall be consistent with the purposes of its creation. (1939, c. 325, s. 5.)

§ 131-80. **State Treasurer to act as ex officio treasurer of sanatorium.**—The Treasurer of the State of North Carolina shall be ex officio treasurer of said sanatorium and shall keep all accounts of said sanatorium and pay out all monies to its credit in the way and manner as now or hereafter may be provided by law for the disbursement of funds of the State of North Carolina specifically allotted to any institution or for any specified purpose. (1939, c. 325, s. 6.)

§ 131-81. **Gifts and donations.**—The said board of directors are empowered to receive or accept gifts or donations for the benefit of said sanatorium which shall be used by said board in their discretion for the purpose of carrying out the work for which the sanatorium is established. (1939, c. 325, s. 12.)

§ 131-82. **Compensation of directors.**—Each member of the board of directors while engaged in attending to the affairs of said sanatorium shall be entitled to receive as compensation the sums fixed by the biennial appropriations acts. (1939, c. 325, s. 13.)

ARTICLE 10.

Funds of Deceased Inmates.

§ 131-83. **Applied to debts due by such inmates to such hospitals or institutions.**—Whenever any funds shall be placed or deposited with the officials of any State hospital or other charitable institution by or for any patient or inmate thereof, and the person by or for whom such deposit is made dies while a patient or inmate of such State hospital or other charitable institution or leaves such institution and at the time of such death, or departure, such patient or inmate is indebted to said hospital or other charitable institution for care and maintenance while such patient or inmate, the board of directors or trustees of such State hospital or other charitable institution are hereby authorized, empowered and directed to apply such deposit, or so much thereof as may be necessary, and which may remain in their hands unclaimed for the space of three years after such death or departure on and in satisfaction of the indebtedness of such patient or inmate, to said State hospital or other charitable institution for said care and maintenance. If the whole of such amount so on deposit shall not be required or necessary for the payment in full of such indebtedness for such care and maintenance, the remainder shall continue to be held by said officials, and paid out and applied as may be by law required. (1933, c. 352, s. 1.)

ARTICLE 11.

Sanatorium for Tubercular Prisoners.

§ 131-84. **Establishment of sanatorium; power and authority of directors.**—There shall be established at, or as near to as feasible, the North Carolina Sanatorium for the Treatment of Tuberculosis, a sanatorium for the treatment of tubercular prisoners or convicts. The board of directors of the North Carolina Sanatorium for the Treatment of Tuberculosis shall have the same authority and power over said sanatorium as they have over the North Carolina Sanatorium for the Treatment of Tuberculosis. (1923, c. 96, c. 127, s. 2; C. S., s. 7220(a).)

Editor's Note.—See 1 N. C. Law Rev.
269.

§ 131-85. Reports from county physicians or health officers; history of case, etc.—The county physician or county health officer of the various counties of the State who has examined any prisoner, or convict upon the public roads, and has pronounced him to be affected with tuberculosis, is required to report such case to the board of directors of the North Carolina Sanatorium for the Treatment of Tuberculosis, giving a history of the same and such other facts as the board of directors of the North Carolina Sanatorium for the Treatment of Tuberculosis may determine in its rules and regulations. (1923, c. 127, s. 3; C. S., s. 7220(b).)

§ 131-86. Physician at State Prison and convict camp.—The physician in charge of the State Prison or any particular convict camp of State prisoners shall make similar reports under similar rules and regulations to the board of directors of the North Carolina Sanatorium for the Treatment of Tuberculosis of all State prisoners who upon examination by him have been determined to be affected with tuberculosis. (1923, c. 127, s. 4; C. S., s. 7220(c).)

§ 131-87. Examination by directors of sanatorium; transfer to sanatorium. The board of directors of the North Carolina Sanatorium for the Treatment of Tuberculosis, upon receiving such reports, shall examine into the condition of these prisoners or convicts, and, if it is determined that such condition justifies it, shall direct their transfer from either county authorities, if a county prisoner, or the State Prison, if a State prisoner, to the sanatorium herein provided. The cost of such transfer, if it is a county prisoner, shall be paid by the county from which he is transferred; if a State prisoner, the cost shall be paid by the State Prison. If a tuberculous prisoner is thus transferred to the sanatorium, the county from which he is sent shall, upon notice from the sanatorium that the prisoner has recovered or is in such condition that it would be safe to return him to the county, within five days after such notice, send for such prisoner and return him to the county from which he was committed. Any failure on the part of the county to send for such prisoner as herein provided after such notice shall render the county liable for the expenses of maintaining the prisoner. (1923, c. 127, s. 5; C. S., s. 7220(d); 1927, c. 127.)

§ 131-88. Nursing, guarding and disciplining of prisoners.—The prison division of the State Prison Department for tuberculous prisoners of McCain, North Carolina, or any other place where a prison division for tuberculous prisoners may be established, shall have the same powers, duties, and responsibilities in the nursing, guarding and disciplining of tuberculous prisoners and convicts as it now has as to other prisoners and inmates under its supervision and control. (1923, c. 127, s. 6; C. S., s. 7220(e); 1949, c. 1136; 1955, c. 968, s. 1; 1957, c. 349, s. 10.)

Editor's Note.—The 1949 amendment rewrote this section.

The 1955 amendment rewrote this section and made it applicable to "nursing."

The 1957 amendment substituted "State Prison Department" for "State Highway and Public Works Commission."

§ 131-89. Feeding prison staff; medical and dietetic treatment and care of convicts.—The North Carolina Sanatorium for the Treatment of Tuberculosis shall provide food for the prison staff, on the same basis it provides food for its own employees, and have the same duties and responsibilities in providing medical and dietetic treatment and care of the inmates of said Sanatorium for the treatment of tuberculous prisoners or convicts as it had prior to the passage of this section. (1923, c. 127, s. 1; C. S., s. 7220(f); 1949, c. 1136; 1955, c. 968, s. 2.)

Editor's Note.—This section was rewritten by the 1949 amendment.

The 1955 amendment inserted "on the

same basis it provides food for its own employees," and substituted "tuberculous" for "tubercular."

ARTICLE 12.

Hospital Authorities Law.

§ 131-90. **Short title.**—This article may be referred to as the “Hospital Authorities Law.” (1943, c. 780, s. 1.)

Editor’s Note.—For comment on this article, see 21 N. C. Law Rev. 354.

§ 131-91. **Finding and declaration of necessity.**—It is hereby declared that conditions resulting from the concentration of population in various cities and towns of the State having a population of more than seventy-five thousand inhabitants require the construction, maintenance and operation of adequate hospital facilities for the care of the public health and for the control and treatment of epidemics, for the care of the indigent and for the public welfare; that in various cities and towns of the State having a population of more than seventy-five thousand inhabitants, there is a lack of adequate hospital facilities available to the inhabitants thereof and that consequently many persons including persons of low income are forced to do without adequate medical and hospital care and accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the State and impair economic values; that the aforesaid conditions also exist in certain areas surrounding such cities and towns; that these conditions cannot be remedied by the ordinary operations of private enterprises; that the providing of adequate hospital and medical care are public uses and purposes for which public money may be spent and private property acquired; that it is in the public interest that adequate hospital and medical facilities and care be provided in such concentrated centers of population in order to care for and protect the health and public welfare; and the necessity in the public interest for the provision hereinafter enacted is hereby declared as a matter of legislative determination. (1943, c. 780, s. 2.)

§ 131-92. **Definitions.**—The following terms, wherever used or referred to in this article shall have the following respective meanings, unless a different meaning clearly appears from the context:

- (1) “Authority” or “hospital authority” shall mean a public body and a body corporate and politic organized in accordance with the provisions of this article for the purposes, with the powers and subject to the restrictions hereinafter set forth.
- (2) “Bonds” shall mean any bonds, interim certificates, notes, debentures, or other obligations of the authority issued pursuant to this article.
- (3) “City” shall mean the city or town having a population of more than seventy-five thousand inhabitants (according to the last federal census) which is, or is about to be, included in the territorial boundaries of an authority when created hereunder.
- (4) “City clerk” and “mayor” shall mean the clerk and mayor, respectively, of the city or the officers thereof charged with the duties customarily imposed on the clerk and mayor, respectively.
- (5) “Commissioner” shall mean one of the members of an authority appointed in accordance with the provisions of this article.
- (6) “Contract” shall mean any agreement of an authority with or for the benefit of an obligee whether contained in a resolution, trust indenture, mortgage, lease, bond or other instrument.
- (7) “Council” shall mean the legislative body, council, board of commissioners, board of trustees, or other body charged with governing the city.
- (8) “Federal government” shall include the United States of America, the federal emergency administration of public works or any agency, instrumentality, corporate or otherwise, of the United States of America.

- (9) "Government" shall include the State and federal governments and any subdivision, agency or instrumentality, corporate or otherwise, of either of them.
- (10) "Hospital project" shall include all real and personal property, buildings and improvements, officers, and community facilities acquired or constructed or to be acquired or constructed pursuant to a single plan or undertaking to provide adequate hospital facilities and medical care for concentrated centers of population, including persons of low income. The term "hospital project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.
- (11) "Municipality" shall mean any county, city, town or incorporated village, other than the city as defined above, which is located within or partially within the territorial boundaries of an authority.
- (12) "Obligee of the authority" or "obligee" shall include any bondholder, trustee or trustees for any bondholders, any lessor demising property to the authority used in connection with a hospital project or any assignee or assignees of such lessor's interest or any part thereof, and the United States of America, when it is a party to any contract with the authority.
- (13) "Real property" shall include lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.
- (14) "State" shall mean the State of North Carolina.
- (15) "Trust indenture" shall include instruments pledging the revenues of real or personal properties but not conveying such properties or conferring a right to foreclose and cause a sale thereof. (1943, c. 780, s. 3.)

§ 131-93. Creation of authority.—If the council of any city in the State having a population of more than seventy-five thousand according to the last federal census, shall, upon such investigation as it deems necessary, determine:

- (1) That there is a lack of adequate hospital facilities and medical accommodations from the operations of private enterprises in the city and said surrounding area; and/or
- (2) That the public health and welfare, including the health and welfare of persons of low income in the city and said surrounding area, require the construction, maintenance or operation of public hospital facilities for the inhabitants thereof;

the council shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall cause notice of such determination to be given to the mayor, who shall thereupon appoint, as hereinafter provided, eighteen commissioners to act as an authority. Said commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the Secretary of State an application signed by them, which shall set forth (without any detail other than the mere recital):

- (1) That the council has made the aforesaid determination after such investigation, and that the mayor has appointed them as commissioners;
- (2) The name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the hospital authority to become a public body and a body corporate and politic under this article;
- (3) The term of office of each of the commissioners;
- (4) The name which is proposed for the corporation; and
- (5) The location and the principal office of the proposed corporation.

The application shall be subscribed and sworn to by each of the said commissioners before an officer authorized by the laws of the State to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore hereto in the officer's presence. The Secretary of State shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this State or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the Secretary of State shall make and issue to the said commissioners a certificate of incorporation pursuant to this article, under the seal of the State, and shall record the same with the application.

The boundaries of such authority shall include said city and the area within ten miles from the territorial boundaries of said city but in no event shall it include the whole or a part of any other city nor any area included within the boundaries of another authority. In case an area lies within ten miles of the boundaries of more than one city such area shall be deemed to be within the boundaries of the authority embracing such area which was first established, all priorities to be determined on the basis of the time of the issuance of the aforesaid certificates by the Secretary of State. After the creation of an authority, the subsequent existence within its territorial boundaries of more than one city shall in no way affect the territorial boundaries of such authority.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this article upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof. (1943, c. 780, s. 4.)

§ 131-93.1. Change of name by authority.—An authority created and existing pursuant to this article, may at any time, by resolution adopted by a majority of the commissioners, change its name. A copy of such resolution, duly verified by the chairman and secretary of the board of commissioners before an officer authorized by the laws of this State to take and certify oaths, shall be delivered to the Secretary of State, together with a conformed copy thereof. If the Secretary of State shall find that the proposed name is not identical with that of a person or of any other corporation of this State, or so nearly similar as to lead to confusion and uncertainty, he shall receive and file it, and shall record it in an appropriate book of record in his office, and thereupon return to the authority the conformed copy, together with a certificate stating that attached thereto is a true copy of the document filed in his office and showing the date of such filing. (1961, c. 988, s. 1.)

§ 131-94. Appointment, qualifications, and tenure of commissioners.—An authority shall consist of eighteen commissioners appointed by the mayor and he shall designate the first chairman.

One-third of the commissioners who are first appointed shall be designated by the mayor to serve for terms of four years, one-third to serve for terms of eight years, and one-third to serve for terms of twelve years respectively from the date of their appointment. Thereafter, the term of office shall be three years. A commissioner shall hold office until his successor has been appointed and has qualified. Vacancies shall be filled for the unexpired term. In the event of a vacancy or vacancies in the membership of the board by expiration of term of office or otherwise, the remaining members of the board shall submit to the mayor nominations for appointments. The mayor may successively require any number of additional nominations, and shall

have power to appoint any person so nominated. All such vacancies shall be filled from such nominations. A majority of the commissioners shall constitute a quorum. The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner shall receive no compensation for his services but he shall be entitled to the necessary expenses including traveling expenses incurred in the discharge of his duties.

When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman, and it may employ a secretary, technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. An authority may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper. (1943, c. 780, s. 5.)

§ 131-95. Duty of the authority and commissioners of the authority.—The authority and its commissioners shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this article and the laws of the State and in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed. (1943, c. 780, s. 6.)

§ 131-96. Interested commissioners or employees.—No commissioner or employee of an authority shall acquire any interest direct or indirect in any hospital project or in any property included or planned to be included in any project, nor shall he have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any hospital project. If any commissioner or employee of an authority owns or controls an interest direct or indirect in any property included or planned to be included in any hospital project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office. (1943, c. 780, s. 7.)

§ 131-97. Removal of commissioners.—The mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner shall have been given a copy of the charges against him (which may be made by the mayor) at least ten days prior to the hearing thereon and had an opportunity to be heard in person or by counsel.

Any obligee of the authority may file with the mayor written charges that the authority is violating willfully any law of the State or any term, provision or covenant in any contract to which the authority is a party. The mayor shall give each of the commissioners a copy of such charges at least ten days prior to the hearing thereon and an opportunity to be heard in person or by counsel and shall within fifteen days after receipt of such charges remove any commissioners of the authority who shall have been found to have acquiesced in any such willful violation.

If, after due and diligent search, a commissioner to whom charges are required to be delivered hereunder cannot be found within the county where the authority is located, such charges shall be deemed served upon said commissioner if mailed to him at his last known address as same appears upon the records of the authority.

A commissioner shall be deemed to have acquiesced in a willful violation by the authority of a law of this State or of any term, provision or covenant contained in a contract to which the authority is a party, if, before a hearing is held on charges against him, he shall not have filed a written statement with the authority of his objections to, or lack of participation in, such violation.

In the event of the removal of any commissioner, the mayor shall file in the office of the city clerk a record of the proceedings together with the charges made against the commissioners and the findings thereon. (1943, c. 780, s. 8.)

§ 131-98. **Powers of authority.**—(a) **Powers Generally: Enumeration.**—An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others herein granted:

- (1) To investigate into hospital, medical and health conditions and into the means and methods of improving such conditions;
- (2) To determine where inadequate hospital and medical facilities exist;
- (3) To study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of providing adequate hospital, medical and nursing facilities, and the providing of adequate hospital, medical and nursing facilities for the inhabitants of such city and area, including persons of low income in such city and area;
- (4) To prepare, carry out and operate hospital projects;
- (5) To provide and operate outpatient departments, maternity clinics and any other clinics customarily operated in hospitals in metropolitan centers;
- (6) To provide teaching and instruction programs and schools for medical students, internes, physicians and nurses;
- (7) To provide and maintain continuous resident physician and interne medical services;
- (8) To appoint an administrator, a superintendent or matron, and necessary assistants, and any and all other employees deemed necessary or advisable and fix their compensation, and to remove such appointees;
- (9) To adopt bylaws for the conduct of its business;
- (10) To adopt necessary rules and regulations for the government of the authority and its employees;
- (11) To enter into contracts for necessary supplies, equipment or services incident to the operation of its business;
- (12) To appoint such committees or subcommittees as it shall deem advisable, and fix their duties and responsibilities, and to do all things necessary in connection with the construction, repair, reconstruction, management, supervision, control and operation of its business, including but not limited to the hospital and all departments thereof;
- (13) To accept donations of money, personal property or real estate for the benefit of the authority and take title thereto from any person, firm, corporation or society desiring to make such donations;
- (14) To determine and regulate the conditions under which the privilege of practicing within any hospital operated by the authority may be available to physicians, and to promulgate reasonable rules and regulations governing the conduct of physicians and nurses while on duty in said hospital;
- (15) To establish and maintain a training school for nurses;
- (16) To make rules and regulations governing the admission of patients to, and the care, conduct, and treatment of patients in, the hospital;
- (17) To determine whether patients presented to the hospital for treatment are subjects for charity and to fix the compensation to be paid by patients other than those unable to assist themselves;
- (18) To maintain and operate isolation wards for the care and treatment of mental, contagious or other similar diseases;
- (19) To provide for the construction, reconstruction, improvement, alteration or repair of any hospital project or any part thereof;
- (20) To take over by purchase, lease or otherwise any hospital project located within its boundaries undertaken by any government, or by any city or municipality located in whole or in part within its boundaries;
- (21) To act as agent for the federal government in connection with the acquisi-

- tion, construction, operation and/or management of a hospital project, or any part thereof ;
- (22) To arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, re-planning, installing, opening or closing of streets, roads, roadways, alleys, sidewalks or other places or facilities, or for the acquisition by such city, municipality, or a government of property, options or property rights or for the furnishing of property or services in connection with a project ;
 - (23) To arrange with the State, its subdivision and agencies, and any county, city or municipality of the State, to the extent that it is within the scope of each of their respective functions,
 - a. To cause the services customarily provided by each of them to be rendered for the benefit of such hospital authority and
 - b. To provide and maintain parks and sewage, water and other facilities adjacent to or in connection with hospital projects and to lease or rent any of the dwelling or other accommodations or any of the lands, buildings, structures or facilities embraced in any hospital project and to establish and revise the rents or charges therefor ;
 - (24) To purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, municipality, or government ;
 - (25) To acquire by eminent domain any real property, including improvements and fixtures thereon ;
 - (26) To sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, municipality, city, or government ;
 - (27) To own, hold, clear and improve property ;
 - (28) To insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable ;
 - (29) To borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues in the manner and to the extent hereinafter provided ;
 - (30) In connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this article ;
 - (31) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which trustees, guardians, executors, administrators, and others acting in a fiduciary capacity may legally invest funds subject to their control ;
 - (32) To sue and be sued ;
 - (33) To have a seal and to alter the same at pleasure ;
 - (34) To have perpetual succession ;
 - (35) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority ;
 - (36) To make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this article, to carry into effect the powers and purposes of the authority.

(b) Exercise of Powers through Agents ; Corporate Agents.—An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific hospital project or projects, through or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this State, and for such purposes an authority may cause one or more corporations to be formed under the laws of this State or may acquire the capital stock of any corporation or corporations. Any corporate agent, all of the stock of which shall be owned by the authority or its nominee or nominees,

may to the extent permitted by law exercise any of the powers conferred upon the authority herein.

(c) **Implied Powers.**—In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this article.

(d) **Certain Provisions Not Applicable to Authority.**—No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state. (1943, c. 780, s. 9.)

§ 131-99. Eminent domain.—The authority shall have the right to acquire by eminent domain any real property, including fixtures and improvements, which it may deem necessary to carry out the purposes of this article after the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use. The authority may exercise the power of eminent domain pursuant to the provisions of either:

(1) Sections 40-11 to 40-29.

(2) Any other applicable statutory provisions now in force or hereafter enacted for the exercise of the power of eminent domain.

Property already devoted to a public use may be acquired, provided, that no property belonging to any city or municipality or to any government or to any religious or charitable corporation may be acquired without its consent and that no property belonging to a public utility corporation may be acquired without the approval of the commission or other officer or tribunal, if any there be, having regulatory power over such corporation. (1943, c. 780, s. 10.)

§ 131-100. Zoning and building laws.—All hospital projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the hospital project is situated. (1943, c. 780, s. 11.)

§ 131-101. Types of bonds.—The authority shall have power and is hereby authorized from time to time in its discretion to issue for the purpose only of constructing, furnishing and equipping new buildings or additions to existing buildings:

Bonds on which the principal and interest are payable exclusively from the income and revenues of the project constructed, furnished and equipped with the proceeds of such bonds or with such proceeds together with the proceeds of a grant from the federal government to aid in financing, furnishing or equipment thereof, provided, however, that the credit of the authority shall not be pledged to the payment of such bonds, but such bonds shall be payable only (and the bonds shall so state on their face) from the revenues of the designated hospital project or projects, and if the authority so determines, shall be additionally secured by a trust indenture pledging such revenues from such designated hospital project or projects.

Neither the commissioners of the authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

The bonds and other obligations of the authority (and such bonds and obligations shall so state on their face) shall not be a debt of any city or municipality located within its boundaries or of the State and neither the State nor any such city or municipality shall be liable thereon, nor in any event shall they be payable out of any funds or properties other than those of the authority. The bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation of the laws of the State. Bonds may be issued under this article notwithstanding any debt or other limitation prescribed in any statute. (1943, c. 780, s. 12.)

§ 131-102. Form and sale of bonds.—The bonds of the authority shall be authorized by its resolution and shall be issued in one or more series and shall bear such date or dates, mature at such time or times, not exceeding sixty years from their respective dates, bear interest at such rate or rates, not exceeding six per

centum (6%) per annum payable semiannually, be in such denominations (which may be made interchangeable), be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution or its trust indenture or mortgage may provide.

The bonds shall be sold at public sale held after notice published once at least ten days prior to such sale in a newspaper having a general circulation in the city and in a financial newspaper published in the city of New York, New York, or in the city of Chicago, Illinois, and; provided that if no bid is received upon such notice which is a legal bid and legally acceptable under such notice, then and in that event the bonds may be sold at private sale at any time within thirty days after the date for receiving bids given in such notice, provided, however, that such bonds may be sold to the federal government at private sale without any public advertisement. The bonds may be sold at such price or prices as the authority shall determine provided that the interest cost to maturity of the money received for any issue of said bonds shall not exceed six per centum (6%) per annum.

Pending the authorization, preparation, execution or delivery of definitive bonds, the authority may issue interim certificates, or other temporary obligations, to the purchaser of such bonds. Such interim certificates, or other temporary obligations, shall be in such form, contain such terms, conditions and provisions, bear such date or dates, and evidence such agreements relating to their discharge or payment or the delivery of definitive bonds as the authority may by resolution, trust indenture or mortgage determine.

In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if they had remained in office until such delivery.

The authority shall have power out of any funds available therefor to purchase any bonds issued by it at a price not more than the principal amount thereof and the accrued interest; provided, however, that bonds payable exclusively from the revenues of a designated project or projects shall be purchased out of any such revenues available therefor. All bonds so purchased shall be canceled. This paragraph shall not apply to the redemption of bonds.

Any provision of any law to the contrary notwithstanding, any bonds, interim certificates, or other obligations issued pursuant to this article shall be fully negotiable. (1943, c. 780, s. 13.)

§ 131-103. Provisions of bonds, trust indentures, and mortgages.—In connection with the issuance of bonds and/or the incurring of any obligation under a lease and in order to secure the payment of such bonds and/or obligations, the authority shall have power:

- (1) To pledge by resolution, trust indenture, mortgage (subject to the limitations herein imposed), or other contract, all or any part of its rents, fees, or revenues.
- (2) To covenant against mortgaging all or any part of its property, real or personal, then owned or thereafter acquired, or against permitting or suffering any lien thereon.
- (3) To covenant with respect to limitations on its right to sell, lease or otherwise dispose of any hospital project or any part thereof, or with respect to limitations on its right to undertake additional hospital projects.
- (4) To covenant against pledging all or any part of its rents, fees and revenues to which its right then exists or the right to which may thereafter come into existence or against permitting or suffering any lien thereon.
- (5) To provide for the release of property, rents, fees and revenues from any pledge or mortgage, and to reserve rights and powers in, or the right to dispose of, property which is subject to a pledge or mortgage.

- (6) To covenant as to the bonds to be issued pursuant to any resolution, trust indenture, mortgage or other instrument and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof.
- (7) To covenant as to what other, or additional debt, may be incurred by it.
- (8) To provide for the terms, form, registration, exchange, execution and authentication of bonds.
- (9) To provide for the replacement of lost, destroyed or mutilated bonds.
- (10) To covenant as to the use of any or all of its property, real or personal.
- (11) To create or to authorize the creation of special funds in which there shall be segregated
 - a. The proceeds of any loan and/or grant;
 - b. All of the rents, fees and revenues of any hospital project or projects or parts thereof;
 - c. Any moneys held for the payment of the costs of operation and maintenance of any such hospital projects or as a reserve for the meeting of contingencies in the operation and maintenance thereof;
 - d. Any moneys held for the payment of the principal and interest on its bonds or the sums due under its leases and/or as a reserve for such payments; and
 - e. Any moneys held for any other reserve or contingencies;and to covenant as to the use and disposal of the moneys held in such funds.
- (12) To redeem the bonds, and to covenant for their redemption and to provide the terms and conditions thereof.
- (13) To covenant against extending the time for the payment of its bonds or interest thereon, directly or indirectly, by any means or in any manner.
- (14) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given.
- (15) To covenant as to the maintenance of its property, the replacement thereof, the insurance to be carried thereon and the use and disposition of insurance moneys.
- (16) To vest in an obligee of the authority the right, in the event of the failure of the authority to observe or perform any covenant on its part to be kept or performed, to cure any such default and to advance any moneys necessary for such purpose, and the moneys so advanced may be made an additional obligation of the authority with such interest, security and priority as may be provided in any trust indenture, mortgage, lease or contract of the authority with reference thereto.
- (17) To covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.
- (18) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition, or obligation.
- (19) To covenant to surrender possession of all or any part of any hospital project or projects the revenue from which has been pledged or mortgaged for the purpose of constructing, furnishing, and equipping new buildings or additions to existing buildings as provided for in this article upon the happening of any event of default (as defined in the contract) and to vest in an obligee the right without judicial proceeding to take possession and to use, operate, manage and control such hospital

projects or any part thereof, and to collect and receive all rents, fees and revenues arising therefrom in the same manner as the authority itself might do and to dispose of the moneys collected in accordance with the agreement of the authority with such obligee.

- (20) To vest in a trustee or trustees the right to enforce any covenant made to secure, to pay, or, in relation to the bonds, to provide for the powers and duties of such trustee or trustees, to limit liabilities thereof and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any such covenant.
- (21) To make covenants other than in addition to the covenants herein expressly authorized, of like or different character.
- (22) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those above specified, as the government of any purchaser of the bonds of the authority may reasonably require.
- (23) To make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in the absolute discretion of the authority tend to make the bonds more marketable; notwithstanding that such covenants, acts or things may not be enumerated herein; it being the intention hereof to give the authority power to do all things in the issuance of bonds, in the provisions for their security that are not inconsistent with the Constitution of the State and no consent or approval of any judge or court shall be required thereof; and provided that the authority may not pledge or mortgage the revenue from any project excepting one newly constructed, furnished and equipped in whole or in part with funds derived or to be derived from the sale of bonds secured by such pledge or mortgage. (1943, c. 780, s. 14.)

§ 131-104. Remedies of an obligee of authority.—An obligee of the authority shall have the right in addition to all other rights which may be conferred on such obligee subject only to any contractual restrictions binding upon such obligee:

- (1) By mandamus, suit, action or proceeding in law or equity (all of which may be joined in one action) to compel the authority, and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of the authority, and to require the carrying out of any or all covenants and agreements of the authority and the fulfillment of all duties imposed upon the authority by this article.
- (2) By suit, action or proceeding in equity to enjoin any acts or things which may be unlawful, or the violation of any of the rights of such obligee of the authority. (1943, c. 780, s. 15.)

§ 131-105. Additional remedies conferrable by mortgage or trust indenture.—Any authority shall have power by its trust indenture, mortgage, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, lease or other obligations the right upon the happening of an “event of default” as defined in such instrument:

- (1) By suit, action or proceeding in any court of competent jurisdiction to obtain the appointment of a receiver of any hospital project of the authority or any part or parts thereof, constructed, equipped and furnished in whole or in part from funds derived or to be derived in whole or in part from the sale of bonds secured by the pledge or mortgage of the revenues from such property. If such receiver be appointed, he may enter and take possession of such hospital project or any part or

parts thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom in the same manner as the authority itself might do and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of the authority as the court shall direct.

- (2) By suit, action or proceeding in any court of competent jurisdiction to require the authority and the commissioners thereof to account as if it and they were the trustees of an express trust. (1943, c. 780, s. 16.)

§ 131-106. Remedies cumulative.—All the rights and remedies hereinabove conferred shall be cumulative and in addition to all other rights and remedies that may be conferred upon such obligee of the authority by law or by any contract with the authority. (1943, c. 780, s. 17.)

§ 131-107. Limitations on remedies of obligee.—No interest of the authority in any property, real or personal, shall be subject to sale by the foreclosure of a mortgage thereon, either through judicial proceedings or the exercise of a power of sale contained in such mortgage. All property of the authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same. No judgment against the authority shall be a charge or lien upon its property, real or personal. (1943, c. 780, s. 18.)

§ 131-108. Contracts with federal government.—In addition to the powers conferred upon the authority by other provisions of this article, the authority is empowered to borrow money and/or accept grants from the federal government for or in aid of the construction of any hospital project which such authority is authorized by this article to undertake, to take over any land acquired by the federal government for the construction of a hospital project, to take over or lease or manage any hospital project constructed or owned by the federal government, and to these ends, to enter into such contracts, mortgages, trust indentures, leases or other agreements that the federal government shall have the right to supervise and approve the construction, maintenance and operation of such hospital project. It is the purpose and intent of this article to authorize every authority to do any and all things necessary to secure the financial aid and the co-operation of the federal government in the construction, maintenance and operation of any hospital project which the authority is empowered by this article to undertake. (1943, c. 780, s. 19.)

§ 131-109. Security for funds deposited by authority.—The authority may by resolution provide that all moneys deposited by it shall be secured

- (1) By obligations of the United States or of the State of a market value equal at all times to the amount of such deposits or
- (2) By any securities in which trustees, guardians, executors, administrators and others acting in a fiduciary capacity may legally invest funds within their control or
- (3) By an undertaking with such sureties as shall be approved by the authority faithfully to keep and pay over upon the order of the authority any such deposits and agreed interest thereon,

and all banks and trust companies are authorized to give any such security for such deposits. (1943, c. 780, s. 20.)

§ 131-110. Tax exemptions.—The authority shall be exempt from the payment of any taxes or fees to the State or any subdivisions thereof, or to any officer or employee of the State or any subdivision thereof. The property of an authority shall be exempt from all local and municipal taxes and for the purposes of such tax exemption, it is hereby declared as a matter of legislative determination that an authority is and shall be deemed to be a municipal corporation. Bonds, notes, debentures and other evidences of indebtedness of an authority are declared to be issued for a public purpose and to be public instrumentalities and, together with

interest thereon, shall be exempt from taxes when same are held by the federal government or by any purchaser from the federal government or anyone acquiring title from or through such purchaser. (1943, c. 780, s. 21.)

§ 131-111. Reports.—The authority shall at least once a year file with the mayor of the city an audit report by a certified public accountant of its activities for the preceding year, and shall make any recommendations with reference to any additional legislation or other action that may be necessary in order to carry out the purposes of this article. (1943, c. 780, s. 22.)

§ 131-112. Certificate of public convenience and necessity prerequisite to exercise of power of eminent domain; powers of Utilities Commission.—Notwithstanding any finding of public convenience and necessity, either in general or specific, by the terms of this article, the right of eminent domain shall not be exercised unless and until a certificate of public convenience and necessity for such project has been issued by the Utilities Commission of North Carolina, and the proceedings leading up to the issuing of such certificate of public convenience and necessity, and the right to appeal therefrom shall as near as may be follow the proceedings now provided by law for obtaining such a certificate under the Motor Vehicle Carrier Act, and said rights are hereby expressly reserved to all interested parties in said proceedings. In addition to the powers now granted by law to the Utilities Commission of North Carolina, the said Utilities Commission is hereby vested with full power and authority to investigate and examine all projects set up or attempted to be set up under the provisions of this article and determine the question of the public convenience and necessity for said project. (1943, c. 780, s. 23.)

§ 131-113. Exemption from the Local Government Act, and from the County Fiscal Control Act.—The authority shall be exempt from the operation and provisions of chapter 60 of the Public Laws of 1931 (codified as §§ 159-1 et seq., and 160-409 to 160-412), known as the "Local Government Act," and the amendments thereto and from §§ 153-114 to 153-141, known as the "County Fiscal Control Act," and the amendments thereto. (1943, c. 780, s. 24.)

§ 131-114. Appropriations by city and county.—The governing body of any city or county in which the authority is located may appropriate each year, not exceeding five per cent of its general fund for the improvement, maintenance or operation of any public hospital or hospital project constructed, maintained, or operated by or to be constructed, maintained or operated by an authority, and moneys so appropriated and paid to a hospital authority by a city or municipality shall be deemed a necessary expense of such city or municipality. (1943, c. 780, s. 25.)

Local Modification.—City of Charlotte:
1955, c. 1114.

§ 131-115. Conveyance, lease or transfers of property by a city or municipality to an authority; right to name commissioners of authority.—Any city or municipality in order to provide for the construction, reconstruction, improvement, repair or management of any hospital or hospital project, or in order to accomplish any of the purposes of this article may, with or without consideration or for a nominal consideration, lease, sell, convey or otherwise transfer to an authority, within the territorial boundaries of which such city or municipality is wholly or partly located, any real, personal or mixed property including, but not limited to, any existing hospital or hospital project as a going concern or otherwise, and including the assignment and transfer of any part of or all money, choses in action and other assets used or held for the use of such hospital or hospital project, and in connection with any such transaction the authority involved may accept such

lease, transfer, assignment and conveyance and bind itself to the performance and observation of any agreements and conditions attached thereto.

In the event any municipality or city shall sell, convey or otherwise irrevocably transfer to an authority property pursuant to this section having a market value in excess of one hundred thousand dollars (\$100,000.00) and in the event the authority accepts the conveyance, the chairman or mayor of the governing body of such municipality or city shall thereafter have the right to name to the authority, to serve as commissioners, for three-year terms such number of persons as, when compared with the existing membership of the authority, will, in the sole opinion of the governing body of such municipality or city and the authority, fairly represent the approximate relationship of the total value of the property being transferred to the total value of the property already held by the authority, but in no event shall fewer than two persons nor more than nine persons be added to the authority. The size of the authority shall be increased by the number thus added. The times of commencement and of expiration of the initial terms of those being added shall be determined by agreement between the authority and the governing body, and copies of the agreement setting out the number of persons being added and the terms shall be filed with the clerk of such municipality or city, and thereafter copies of reports referred to in G. S. 131-111 shall be filed with the clerk of such municipality or city. (1943, c. 780, s. 26; 1961, c. 988, s. 2.)

Editor's Note.—The 1961 amendment added the second paragraph.

§ 131-116. Article controlling.—Insofar as the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article shall be controlling, provided that nothing in this article shall prevent any municipality from establishing, equipping, and operating a hospital or hospitals or improving or extending existing hospitals and hospital facilities under the provisions of its charter or any general law other than this article. (1943, c. 780, s. 28.)

Local Modification.—Craven and city of New Bern: 1943, c. 780, s. 29; Wayne and city of Goldsboro: 1947, c. 969.

§ 131-116.1. Article applicable to city of High Point.—All the provisions of this article shall apply to the city of High Point, Guilford County, North Carolina, as fully as if the population of such city exceeded seventy-five thousand (75,000) inhabitants. (1947, c. 349.)

ARTICLE 13.

Medical Care Commission and Program of Hospital Care.

§ 131-117. North Carolina Medical Care Commission.—There is hereby created a State agency to be known as "The North Carolina Medical Care Commission," which shall be composed of twenty members nominated and appointed as follows:

Three members shall be nominated by the Medical Society of the State of North Carolina; one member by the North Carolina Hospital Association; one member by the North Carolina Nurses' Association; one member by the North Carolina Pharmaceutical Association, and one member by the Duke Foundation, for appointment by the Governor. One member shall be a dentist licensed to practice in North Carolina appointed by the Governor after requesting recommendations from the president of the North Carolina Dental Society.

Ten members of said Commission shall be appointed by the Governor and selected so as to fairly represent agriculture, industry, labor, and other interests and groups in North Carolina. In appointing the members of said Commission, the Governor shall designate the term for which each member is appointed. Four of said members

shall be appointed for a term of one year; four for a term of two years; four for a term of three years; five for a term of four years; and thereafter, all appointments shall be for a term of four years. All vacancies shall be filled by the Governor for the unexpired term. The Commissioner of Public Welfare, and the State Health Director shall be ex officio members of the Commission, without voting power.

The Commission shall elect, with the approval of the Governor, a chairman and a vice-chairman. All members, except the Commissioner of Public Welfare, and the State Health Director shall receive a per diem of seven dollars (\$7.00) and necessary travel expenses. (1945, c. 1096; 1957, c. 1357, s. 17; 1963, c. 325.)

Editor's Note.—The 1957 amendment, effective January 1, 1958, substituted "State Health Director" for "secretary of the State Board of Health" in the third and

fourth paragraphs.

The 1963 amendment rewrote the part of the second paragraph relating to the dentist member.

§ 131-118. Commission authorized to employ executive secretary.—The North Carolina Medical Care Commission is authorized and empowered to employ, subject to the approval of the Governor, an executive secretary, and to determine his or her salary under the provisions of the Personnel Act. The executive secretary may employ such additional persons as may be required to carry out the provisions of this article, subject to approval of the Commission, and the provisions of the Personnel Act. Office space for the Commission shall be provided by the Board of Public Buildings and Grounds, in Raleigh. (1945, c. 1096.)

§ 131-119: Repealed by Session Laws 1961, c. 138, s. 1, effective May 1, 1961.

§ 131-120. Construction and enlargement of local hospitals.—The North Carolina Medical Care Commission is hereby authorized and empowered to begin immediate surveys of each county in the State to determine:

- (1) The hospital needs of the county or area;
- (2) The economic ability of the county or area to support adequate hospital service;
- (3) What assistance by the State, if any, is necessary to supplement all other available funds, to finance the construction of new hospitals and health centers, additions to existing hospitals and health centers, and necessary equipment to provide adequate hospital service for the citizens of the county or area;

and to report this information, together with its recommendations, to the Governor, who shall transmit this report to the next session of the General Assembly for such legislative action as it may deem necessary to effectuate an adequate State-wide hospital program.

The North Carolina Medical Care Commission is hereby authorized and empowered to act as the agency of the State of North Carolina for the purpose of setting up and administering any State-wide plan for the construction and maintenance of hospitals, public health centers and related facilities, and to receive and administer any funds which may be provided by the General Assembly of North Carolina and/or by the Congress of the United States for such purpose; and the Commission, as such agency of the State of North Carolina with the advice of the State Advisory Council set up as hereinafter provided, shall have the right to promulgate such State-wide plans for the construction and maintenance of hospitals, medical centers and related facilities, or such other plans as may be found desirable and necessary in order to meet the requirements and receive the benefits of any federal legislation with regard thereto. The said Commission shall be authorized to receive and administer any funds which may be appropriated by any act of Congress or of the General Assembly of North Carolina for the construction of hospitals, medical centers and related activities or facilities, which may at any time in the future become available for such purposes; said Commission shall be further authorized to receive and administer any other federal funds, or State funds, which may be available, in the furtherance of any activity in which the Commission is

authorized and empowered to engage under the provisions of this article establishing said Commission, and in connection therewith the Commission is authorized to adopt such rules and regulations as may be necessary to carry out the intent and purposes of this article; to adopt such reasonable and necessary standards with reference thereto as may be proper to fully co-operate with the Surgeon General or other agency or department of the United States with the approval of the federal advisory council in the use of funds provided by the federal government, and at all times make such reports and give such information to the Surgeon General or other agency or department of the United States as may be required.

The Governor is hereby authorized and empowered to set up and establish a State Advisory Council to the North Carolina Medical Care Commission, to consist of five members, who shall each serve for a term of four years, with the right on the part of the Governor to fill vacancies for unexpired terms, said council to include representatives of nongovernment organizations or groups, and of State agencies, concerned with the operation, construction, or utilization of hospitals or medical centers, or allied facilities, which advisory council, when set up by the Governor, shall advise with the North Carolina Medical Care Commission with respect to carrying out the purposes and provisions of this article. The members of the State Advisory Council to the North Carolina Medical Care Commission shall receive a per diem of seven dollars (\$7.00) and necessary travel expenses except that this shall not apply to members of the State Advisory Council to the North Carolina Medical Care Commission who are representatives of a State agency or department and who receive a regular salary paid by appropriations to their agency or department; but such representatives of such State agencies or departments shall be entitled to necessary subsistence and travel expenses.

The North Carolina Medical Care Commission and the said State Advisory Council set up by the Governor as herein authorized, shall be fully authorized and empowered to do all such acts and things as may be necessary, to authorize the State of North Carolina to receive the full benefits of any federal laws which are or may be enacted for the construction and maintenance of hospitals, health centers or allied facilities.

Out of the funds appropriated and made available by the State, the North Carolina Medical Care Commission shall make grants-in-aid to counties, cities, towns and subdivisions of government to acquire real estate and construct thereon hospital facilities, including the reconstruction, remodeling or addition to any hospital facilities which have been or may be acquired by such municipalities or subdivisions of government for use as community hospitals. The appropriations and funds made available by the State shall be allocated, apportioned and granted for the purposes above set forth and for such other related objects or purposes as shall be determined in each case by the North Carolina Medical Care Commission in accordance with the standards, rules and regulations as determined, adopted and promulgated by the North Carolina Medical Care Commission. The North Carolina Medical Care Commission may furnish financial and other types of aid and assistance to any nonprofit hospital owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual, upon the same terms and conditions as such aid and financial assistance is granted to municipalities and subdivisions of government: Provided, that hospitals now in the course of construction and approved by the North Carolina Medical Care Commission and the appropriate federal authority shall be entitled to receive financial assistance on the same basis as any hospital of the same classification and type that may be hereafter constructed and approved by the North Carolina Medical Care Commission and the appropriate federal authority.

Out of funds that may be made available to the North Carolina Medical Care Commission on or after July 1, 1951, by federal grants-in-aid or out of funds so made available by virtue of an act of the Congress of the United States popularly

referred to as the Hill-Burton Act or out of funds made available by any other federal act, and consistent with and in conformity with said Hill-Burton Act, or any other federal act by which said funds may be made available to said Commission, the North Carolina Medical Care Commission shall appropriate, pay over to and make available to the North Carolina Sanatorium for the Treatment of Tuberculosis any sum that may be necessary not exceeding five hundred thousand dollars (\$500,000.00) to supplement the appropriation heretofore made by the State of North Carolina for the building, construction, furnishing and equipping of a new unit which shall be used, governed and operated in accordance with plans to be agreed upon by the North Carolina Sanatorium for the Treatment of Tuberculosis and the University of North Carolina to the end that services may be rendered for the diagnosis and treatment of tuberculosis and other respiratory and related diseases.

The North Carolina Medical Care Commission may make available to any eligible hospital, sanatorium, clinic, or other medical facilities for the treatment of disease operated by the State of North Carolina or under its direction and control, or under the direction and control of any of its agencies or institutions, any unallocated federal sums or balances remaining after all grants-in-aid for local approvable projects made by the said Commission have been completed, disbursed or encumbered for all objects for which such grants-in-aid are available and for which said unallocated balances remain. (1945, c. 1096; 1947, c. 933, ss. 3, 5; 1949, c. 592; 1951, c. 1183, s. 1.)

Editor's Note.—The 1947 amendment added to the second paragraph following subdivision (3) the sentence as to per diem and travel expenses. It also rewrote the last paragraph.

The 1949 amendment rewrote the first

paragraph following subdivision (3).

The 1951 amendment added the last two paragraphs.

Cited in Great American Ins. Co. v. Johnson, 257 N. C. 367, 126 S. E. (2d) 92 (1962).

§ 131-121. Medical and other students; loan fund.—The North Carolina Medical Care Commission is hereby authorized and empowered, in accordance with such rules as it may promulgate, to make loans to students who may wish to become physicians, dentists, pharmacists, or nurses and who are accepted for enrollment in any standard school or college giving approved courses in medicine, dentistry, pharmacy or nursing, and is approved by the Commission provided such student or students shall agree, that upon graduation and being duly licensed, to practice medicine, dentistry, pharmacy or nursing in some rural area of North Carolina for one calendar year of twelve months for each academic year or fraction thereof for which the student receives a loan. Rural area, for the purpose of this section, shall mean any town or village having less than 2,500 population according to the most recent decennial census, or area outside and around any such town or village, or area approved by the Medical Care Commission that is considered to meet the spirit and intent of the student loan program, except that loans may be approved for students of nursing and for graduate nurses enrolled in specialized courses in nursing upon the condition that they practice in any community in North Carolina regardless of population. Such loans shall bear such rate of interest as may be fixed by the Commission, not to exceed four per cent (4%) per annum. The Commission shall have the authority to cancel any contract made between it and any applicant for loans upon cause deemed sufficient by the Commission. In such cases, the applicant shall repay the loan in full with interest at four per cent (4%) per annum.

For the purpose of carrying out the provisions of this section, there is hereby appropriated from the general fund for the fiscal year ending June thirtieth, one thousand nine hundred and forty-six, to the North Carolina Medical Care Commission the sum of fifty thousand dollars (\$50,000.00). The State Treasurer shall set up on his records an account to which shall be deposited said amount, and from which withdrawals shall be made upon vouchers made by the State Auditor upon request of the North Carolina Medical Care Commission. This appropriation shall

not lapse at the end of any biennium, but shall remain available for the purposes herein stated.

For the purpose of encouraging medical students and student nurses to specialize in psychiatry, and to extend the provisions of this section and to provide sufficient funds to accomplish the purposes of this paragraph, there is hereby allocated out of the appropriations contained in chapter 1165 of the 1953 Session Laws for Student Loan Fund in section 1 under Title VI-16(2), for each year of the 1953-1955 biennium, the sum of fifty thousand dollars (\$50,000.00). Loans provided for in this paragraph shall be made only to students in the Schools of Medicine and Nursing who are specializing in psychiatry upon the following express conditions and limitations:

- (1) Loans shall be made only to medical students specializing in psychiatry and student nurses who are specializing in psychiatry and who are enrolled in or engaged in training at the Duke University Medical School, Durham, North Carolina; the Bowman Gray Medical School at Winston-Salem, North Carolina; or at the Medical School of the University of North Carolina at Chapel Hill. Loans shall be made only to bona fide residents of this State.
- (2) No loan shall be made to any one person in excess of two thousand dollars (\$2,000.00) for each scholastic year, not to exceed four years.
- (3) Under rules promulgated by the North Carolina Medical Care Commission, any loans made hereunder shall be cancelled on the basis of a credit of the amount of one year's loan for each year of satisfactory service performed as a member of staff of any of the institutions, clinics or other facilities under the administration of the North Carolina Hospitals Board of Control; the provisions of this section, relative to cancellation of loans on the basis of service performed, shall be applicable with respect to service performed since July 1, 1960. Loans or any parts thereof not so cancelled shall be repaid by the borrower and shall bear interest at the rate of four per cent (4%) per annum.

The North Carolina Medical Care Commission is hereby authorized, in its discretion, to approve transfers between rural and State hospitals programs so as to enable a student, after completing his training, to liquidate his obligations to the State under either program he prefers subject to the approval of the Commission and the State Hospitals Board of Control.

The North Carolina Medical Care Commission is hereby authorized and empowered to establish and promulgate rules and regulations fixing fair and reasonable standards, systems and plans whereby physicians, dentists, pharmacists, and nurses receiving loans under this section shall receive a credit on the principal and/or interest of such loan in an amount fixed by such Commission for each year, or other period of time as fixed by regulation, of practicing his or her profession in a rural area as defined in this section: Provided, however, in the case of nurses a rural area shall mean any community in North Carolina regardless of population. (1945, c. 1096; 1947, c. 933, s. 2; 1949, c. 1019; 1953, c. 1222; 1959, c. 1028, ss. 1-4; c. 1165; 1963, c. 365, s. 1; c. 493.)

Editor's Note.—The 1947 amendment rewrote the first paragraph to make it applicable to students who may wish to become dentists, pharmacists or nurses.

The 1949 amendment added the last paragraph.

The 1953 amendment inserted the provisions as to loans to students specializing in psychiatry.

The first 1959 amendment changed the names of the hospitals formerly referred to in subdivision (3) of the third paragraph of this section.

The second 1959 amendment made changes in the latter part of the first and second sentences of the first paragraph and added the last two sentences thereof. It also inserted the next to the last paragraph.

The first 1963 amendment rewrote subdivision (3) of the third paragraph of this section. The second 1963 amendment added the exception clause as to students of nursing and graduate nurses at the end of the second sentence of the first paragraph, and added the proviso at the end of the last paragraph.

§ 131-121.1. Graduate students in sociology and psychology; loan fund.—The North Carolina Medical Care Commission is hereby authorized and empowered in accordance with such rules as it may promulgate to make loans to students who wish to do graduate work in the field of sociology or psychology and who are enrolled in or accepted for enrollment in the appropriate graduate school of Duke University, Durham, North Carolina; Wake Forest College, Winston-Salem, North Carolina; or the University of North Carolina at Chapel Hill, North Carolina. Loans shall be made only to bona fide residents of this State and no loan shall be made to any one student in excess of two thousand dollars (\$2,000.00) for each scholastic year. Under rules promulgated by the North Carolina Medical Care Commission any loan made hereunder shall be cancelled on the basis of a credit of the amount of one year's loan for each year of satisfactory service performed as a member of the staff of any of the institutions, clinics or other facilities under the administration of the North Carolina Hospitals Board of Control; the provisions of this section, relative to cancellation of loans on the basis of service performed, shall be applicable with respect to service performed since July 1, 1960. Loans or any part thereof not so cancelled shall be repaid by the borrower and shall bear interest at the rate of four per cent (4%) per annum. Any appropriation made in furtherance of the program set forth in G. S. 131-121 shall likewise be used for the purpose of providing loans made pursuant to the provisions of this section. (1957, c. 1425; 1963, c. 365, s. 2.)

Editor's Note.—The 1963 amendment rewrote the latter part of the third sentence.

§ 131-121.2. Scholarships for graduate nurses who complete courses in anesthesiology.—The North Carolina Medical Care Commission is hereby authorized and empowered, in accordance with such rules and regulations as it may promulgate, to grant scholarships to graduate nurses who complete courses in the field of anesthesiology in accredited schools for nurses in anesthesia and who are enrolled in or accepted for enrollment in any of the accredited schools appropriate for this purpose. The scholarships herein provided shall be made to bona fide residents of this State who are graduate nurses and who agree in such contracts or agreements as may be formulated by the North Carolina Medical Care Commission to reside and render service in such field in North Carolina for a period of five (5) years after graduation from such accredited schools teaching courses in the field of anesthesia. The said grant of scholarships shall be paid to such graduate nurses who apply to and are accepted by the North Carolina Medical Care Commission on the following basis: Two hundred fifty dollars (\$250.00) for the first month; fifty dollars (\$50.00) a month for eleven (11) months; seventy-five dollars (\$75.00) per month for six (6) months. The said scholarship payments may be arranged by the North Carolina Medical Care Commission in such manner and to suit the conditions of the graduate nurses who are accepted for this purpose, and in the event any graduate nurse fails or refuses to complete the course herein provided in an accredited school for nurses in the field of anesthesia, then such graduate nurse shall be required to refund or pay back to the North Carolina Medical Care Commission the total amount of funds advanced to her in the form of scholarships at the rate of interest of six per cent (6%) per annum. The North Carolina Medical Care Commission shall determine what schools are properly accredited and are available to graduate nurses who wish to study and complete a course or courses in the field of anesthesiology. Any refunding or repayment of scholarship funds advanced under this section shall again be used for scholarships for the purposes herein provided. (1963, c. 1246.)

§ 131-122: Repealed by Session Laws 1963, c. 448, s. 17, effective July 1, 1963.

§ 131-123. Appropriations for expenses of the North Carolina Medical Care Commission.—In order to provide funds for the expenses of the North Carolina Medical Care Commission, there is hereby appropriated from the general fund

for the fiscal year ending June thirtieth, one thousand nine hundred and forty-six, the sum of fifty thousand dollars (\$50,000.00) and for the fiscal year ending June thirtieth, one thousand nine hundred and forty-seven, the sum of fifty thousand dollars (\$50,000.00). (1945, c. 1096.)

§ 131-124. **Medical training for negroes.**—The North Carolina Medical Care Commission shall make careful investigation of the methods for providing necessary medical training for negro students, and shall report its findings to the next session of the General Assembly. In addition to the benefits provided by § 116-110, the North Carolina Medical Care Commission is hereby authorized to make loans to negro medical students from the fund provided in § 131-121, subject to such rules, regulations, and conditions as the Commission may prescribe. (1945, c. 1096.)

§ 131-125. **Acceptance of gifts, grants and donations.**—The North Carolina Medical Care Commission is hereby authorized and empowered to accept and administer gifts, grants, or donations which may be made by the federal government or by any person, firm, or corporation for the purpose of carrying out the objects of this article, provided the acceptance of such gifts, grants, or donations shall be made without requiring the surrender of authority or control in the administration thereof by the North Carolina Medical Care Commission. (1945, c. 1096.)

§ 131-126. **Hospital care associations.**—The North Carolina Medical Care Commission is hereby authorized to encourage the development of group insurance plans, the Blue Cross plan, and other plans which provide for insurance for the public against the costs of disease and illness. (1945, c. 1096.)

ARTICLE 13A.

Hospital Licensing Act.

§ 131-126.1. **Definitions and distinctions.**—As used in this article:

- (1) Commission.—“Commission” means the North Carolina Medical Care Commission as established by §§ 131-117 to 131-126, as amended, and as the same may be hereafter amended.
- (2) Governmental unit.—“Governmental unit” means the State or any county, municipality, or other political subdivision or any department, division, board or other agency of any of the foregoing.
- (3) Hospital.—“Hospital” means an institution devoted primarily to the rendering of medical, surgical, obstetrical, or nursing care, which maintains and operates facilities for the diagnosis, treatment or care of two or more nonrelated individuals suffering from illness, injury or deformity, or where obstetrical or other medical or nursing care is rendered over a period exceeding twenty-four hours.

The term “hospital” for clarification purposes, includes, but not by way of limitation, an institution that receives patients and renders for them diagnostic, medical, surgical and nursing care; and “hospital” means also an allied institution that provides for patients diagnostic, medical, surgical and nursing care in branches of medicine such as obstetric, pediatric, orthopedic, and eye, ear, nose, and throat and cardiac services, and in the diagnosis and treatment of mental and neurological ailments, and in the diagnosis and treatment and care of chronic diseases and transmissible diseases.

- (4) Same; Welfare Institution Distinguished.—The term “hospital” as used in this article does not apply to a “welfare institution,” the primary purpose of which is to provide domiciliary and/or custodial care to its residents, and it does not apply to an infirmary which such institution may maintain to provide medical and nursing care for its residents.

Further to distinguish a “hospital” from a “welfare institution,” as the term is used in this article, the latter means orphanages; penal and

correctional institutions; homes for the county or city poor, aged, and infirm; nursing homes for the mentally and physically infirm; homes for the aged; and convalescent and rest homes; and homes for pregnant women who require public assistance and/or custodial care or obstetrical and nursing care in such home, or nursing care prior to or subsequent to delivery in a "hospital."

- (5) Person.—"Person" means any individual, firm, partnership, corporation, company, association, or joint stock association; and includes any trustee, receiver, assignee or other similar representative thereof. (1947, c. 933, s. 6; 1949, c. 920, s. 1; 1955, c. 369; 1961, c. 51, s. 1.)

Editor's Note.—The 1949 amendment rewrote subdivisions (3) and (4).

The 1955 amendment inserted two subdivisions relating to convalescent home and home for the aged and infirm, which subdivisions were repealed by the 1961 amend-

ment.

Design of Article.—This and the following sections are designed to protect the public health and do not constitute the licensee an instrumentality of the State. *Eaton v. Grubbs*, 216 F. Supp. 465 (1963).

§ 131-126.2. Purpose.—The purpose of this article is to provide for the development, establishment and enforcement of basic standards:

- (1) For the care and treatment of individuals in hospitals and
- (2) For the construction, maintenance and operation of such hospitals, which, in the light of existing knowledge, will ensure safe and adequate treatment of such individuals in hospitals, provided, that nothing in this article shall be construed as repealing any of the provisions of article 27 of chapter 130 of the General Statutes of North Carolina. (1947, c. 933, s. 6.)

Editor's Note.—Chapter 130 was rewritten by Session Laws 1957, c. 1357, and the subject matter of former article 27, which dealt with regulation of sanitation in private hospitals and educational institutions by the State Board of Health, is now covered by § 130-170.

Statutes Designed to Protect Health of Persons Licensed by Facility.—As in the case of licenses issued to restaurants, the hospital licensing statutes and regulations

are designed to protect the health of persons served by the facility, and do not authorize any public officials to exert any control whatever over management of the business of the hospital, or to dictate what persons shall be served by the facility. *Simkins v. Moses H. Cone Memorial Hospital*, 211 F. Supp. 628 (1962).

Quoted in *Eaton v. Grubbs*, 216 F. Supp. 465 (1963).

§ 131-126.3. Licensure.—After July 1st, 1947, no person or governmental unit, acting severally or jointly with any other person or governmental unit shall establish, conduct or maintain a hospital in this State without a license. None of the provisions of chapter 104C of the General Statutes shall apply to X-ray facilities in or as a part of any hospital or medical facility which is, or will upon its completion become, subject to the provisions of law relating to the licensing thereof by the North Carolina Medical Care Commission pursuant to this article. (1947, c. 933, s. 6; 1963, c. 66.)

Editor's Note.—The 1963 amendment added the second sentence.

Both private and public hospitals are required to be licensed under this section. *Eaton v. Grubbs*, 216 F. Supp. 465 (1963).

Licensing Does Not Change Character of Institutions from Private to Public.—The license requirement for hospitals in North Carolina in no way changes the character of the institution from private to public. *Simkins v. Moses H. Cone Memorial Hospital*, 211 F. Supp. 628 (1962).

Or Make Them Instrumentalities of Government.—The various contacts that hospitals licensed by the state have with governmental agencies, both federal and state, do not make them instrumentalities of government in the constitutional sense, or subject them to either the Fifth Amendment or the Fourteenth Amendment to the United States Constitution. *Simkins v. Moses H. Cone Memorial Hospital*, 211 F. Supp. 628 (1962).

§ 131-126.4. Application for license.—Licenses shall be obtained from the Commission. Applications shall be upon such forms and shall contain such information as the said Commission may reasonably require, which may include affirmative

evidence of ability to comply with such reasonable standards, rules and regulations as may be lawfully prescribed hereunder. (1947, c. 933, s. 6; 1949, c. 920, s. 3.)

Editor's Note.—The 1949 amendment ing to license fee accompanying application struck out the former last sentence relating to.

§ 131-126.5. Issuance and renewal of license.—Upon receipt of an application for license, the Commission shall issue a license if it finds that the applicant and hospital facilities comply with the provisions of this article and the regulations of the said Commission. Each such license, unless sooner suspended or revoked, shall be renewable annually without charge upon filing of the license, and approval by the Commission, of an annual report upon such uniform dates and containing such information in such form as the Commission shall prescribe by regulation. Each license shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable except with the written approval of the Commission. Licenses shall be posted in a conspicuous place on the licensed premises as prescribed by regulation of the said Commission. (1947, c. 933, s. 6; 1949, c. 920, s. 4.)

Editor's Note.—The 1949 amendment, following "license" the first time it appears struck out "and the license fee" formerly appears in the section.

§ 131-126.6. Denial or revocation of license; hearings and review.—The Commission shall have the authority to deny, suspend or revoke a license in any case where it finds that there has been a substantial failure to comply with the provisions of this article or the rules, regulations or minimum standards promulgated under this article.

Such denial, suspension, or revocation shall be effected by mailing to the applicant or licensee by registered mail, or by personal service of, a notice setting forth the particular reasons for such action. Such denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notice, unless the applicant or licensee, within such thirty-day period shall give written notice to the Commission requesting a hearing, in which case the notice shall be deemed to be suspended. If a hearing has been requested, the applicant or licensee shall be given an opportunity for a prompt and fair hearing before the Commission. At any time at or prior to the hearing, the Commission may rescind the notice of denial, suspension or revocation upon being satisfied that the reasons for the denial, suspension, or revocation have been or will be removed. On the basis of any such hearing, or upon default of the applicant or licensee the determination involved in the notice may be affirmed, modified, or set aside, by the Commission. A copy of such decision, setting forth the finding of facts and the particular reasons for the decision shall be sent by registered mail, or served personally upon, the applicant or licensee. The decision shall become final thirty days after it is so mailed or served, unless the applicant or licensee, within such thirty-day period, appeals the decision to the court, pursuant to § 131-126.14 hereof.

The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by said Commission with the advice of the hospital advisory council. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless the decision is appealed pursuant to § 131-126.14 hereof. A copy or copies of the transcript may be obtained by an interested party on payment of the cost of preparing such copy or copies. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by the aforesaid rules. (1947, c. 933, s. 6.)

Quoted in *Simkins v. Moses H. Cone Memorial Hospital*, 211 F. Supp. 628 (1962).

§ 131-126.7. Rules, regulations and enforcement.—The Commission with the advice of the hospital advisory council, shall adopt, amend, promulgate and enforce such rules, regulations and standards with respect to the different types of

hospitals to be licensed hereunder as may be designed to further the accomplishment of the purposes of the article. (1947, c. 933, s. 6.)

§ 131-126.8. Effective date of regulations.—Any hospital which is in operation at the time of promulgation of any applicable rules or regulations or minimum standards under this article shall be given a reasonable time, not to exceed one year from the date of such promulgation, within which to comply with such rules and regulations and minimum standards. (1947, c. 933, s. 6.)

§ 131-126.9. Inspections and consultations.—The Commission shall make or cause to be made such inspections as it may deem necessary. The Commission may delegate to any State officer, agent, board, bureau or division of State government authority to make such inspections as the Commission may designate and according to rules and regulations promulgated by the Commission. The Commission may revoke such delegated authority in its discretion and make its own inspections according to the powers granted hereunder. The Commission may prescribe by regulations that any licensee or prospective applicant desiring to make specified types of alteration or addition to its facilities or to construct new facilities shall before commencing such alteration, addition or new construction, submit plans and specifications therefor to the Commission for preliminary inspection and approval or recommendations with respect to compliance with the regulations and standards herein authorized. (1947, c. 933, s. 6.)

Cited in *Simkins v. Moses H. Cone Memorial Hospital*, 211 F. Supp. 628 (1962).

§ 131-126.10. Hospital advisory council.—The Commission may appoint a hospital advisory council which shall consist of the executive secretary of the Commission who shall serve as chairman ex officio, the Commissioner of the State Board of Public Welfare, ex officio, the State Health Director, ex officio, the Superintendent of Mental Hygiene, ex officio, and the following: One or more individuals of recognized ability in the field of hospital administration; one or more individuals of recognized ability in the fields of medicine and surgery, nursing, welfare, public health, architecture, or allied professions in the field of health; one or more individuals with broad civic interests representing consumers of hospital services.

In each of these three aforesaid groups, members shall be appointed for terms of one, two, three and four years respectively, and their successors shall be appointed for terms of four years, except when appointed to complete an unexpired term. Members whose terms expire shall hold office until appointment of their successors. The members of the hospital advisory council to the North Carolina Medical Care Commission shall receive a per diem of seven dollars (\$7.00) and necessary travel expenses except that this shall not apply to members of the hospital advisory council who are representatives of a State agency or department and who receive a regular salary paid by appropriations to their agency or department; but such representatives of such state agencies or departments shall be entitled to necessary subsistence and travel expenses. (1947, c. 933, s. 6; 1957, c. 1357, s. 18.)

Editor's Note.—The 1957 amendment "State Health Officer" in the first paragraph substituted "State Health Director" for graph.

§ 131-126.11. Functions of hospital advisory council; meetings.—The hospital advisory council shall have the following responsibilities and duties:

- (1) To consult and advise with the Commission in matters of policy affecting administration of this article, and in the development of rules, regulations and standards provided for hereunder.
- (2) To review and make recommendations with respect to rules, regulations and standards authorized hereunder prior to their promulgation by the Commission as specified herein.

The council shall meet not less than once each year, and additionally at the call of the chairman or at the request of any five of its members. (1947, c. 933, s. 6.)

§ 131-126.12. Information confidential.—Information received by the Commission through filed reports, inspection, or as otherwise authorized under this article, shall not be disclosed publicly in such manner as to identify individuals or hospitals, except in a proceeding involving the question of licensure or the denial, suspension or revocation of a license. (1947, c. 933, s. 6.)

§ 131-126.13. Annual report of Commission.—The Commission shall prepare and publish an annual report of its activities and operations under this article. (1947, c. 933, s. 6.)

§ 131-126.14. Judicial review.—Any applicant or licensee who is dissatisfied with the decision of the Commission as a result of the hearing provided in § 131-126.6 may, within thirty (30) days after the mailing or serving of notice of the decision as provided in said section, file a notice of appeal to the superior court in the office of the clerk of the superior court of the county in which the hospital is located or to be located, and serve a copy of said notice of appeal upon the Commission. Thereupon the Commission shall promptly certify and file with the court a copy of the record and decision, including the transcript of the hearings on which the decision is based. Findings of fact by the Commission shall be conclusive unless contrary to the weight of the evidence but upon good cause shown the court may remand the case to the Commission to take further evidence, and the Commission may thereupon make new or modified findings of facts or decision. The court shall have power to affirm, modify or reverse the decision of the Commission and either the applicant or licensee or the Commission may appeal to the Supreme Court. Pending final disposition of the matter the status quo of the applicant or licensee shall be preserved, except as the court shall otherwise order in the public interest. (1947, c. 933, s. 6.)

§ 131-126.15. Penalties.—Any person establishing, conducting, managing, or operating any hospital without a license shall be guilty of a misdemeanor, and upon conviction thereof shall be liable to a fine of not more than fifty dollars (\$50.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense, and each day of a continuing violation after conviction shall be considered a separate offense. (1947, c. 933, s. 6.)

§ 131-126.16. Injunction.—Notwithstanding the existence or pursuit of any other remedy, the Commission may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a hospital without a license. (1947, c. 933, s. 6.)

§ 131-126.17. Article not applicable to §§ 122-72 to 122-75.—The provisions of this article shall not apply to §§ 122-72 through 122-75, inclusive, of the General Statutes, which give to the State Department of Mental Health, in addition to other responsibilities, authority to license privately owned and operated hospitals for the mentally disordered. (1947, c. 933, s. 6; 1949, c. 920, s. 2; 1963, c. 1166, s. 14.)

Editor's Note.—The 1949 amendment Department of Mental Health" for "State Board of Public Welfare."

The 1963 amendment substituted "State

ARTICLE 13B.

Additional Authority of Subdivisions of Government to Finance Hospital Facilities.

§ 131-126.18. Definitions.—As used in this article:

- (1) "Governing authority of hospital district" means the board of county commissioners of any county in which there is located wholly within the boundaries of the county a hospital district created under the provisions of article 13C of chapter 131 of the General Statutes.

- (2) "Hospital facility" means any type of hospital, clinic or public health center, housing or quarters for local public health departments, including relating facilities such as laboratories, out-patient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals.
- (3) "Municipal" means pertaining to a municipality as herein defined.
- (4) "Municipality" means any county, city, town or other political subdivision of this State, or any hospital district created pursuant to article 13C of chapter 131 of the General Statutes.
- (5) "Nonprofit association" means any corporation or association, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual. (1947, c. 933, s. 6; 1949, c. 766, ss. 1, 2, 4.)

Editor's Note.—The 1949 amendment added subdivision (1). It inserted in subdivision (2) "housing or quarters for local public health departments." It also added at the end of subdivision (4) "or any hospital district created pursuant to article 13C of chapter 131 of the General Statutes."

Use of Funds for Hospital "Buildings."—Where the resolution of the county commissioners in submitting to a vote the question of issuing bonds for a public hospital uses the word "buildings," and it is

later found that a surplus will remain after the erection and equipment of the main hospital building, such surplus may be used for the purpose of erecting on the hospital grounds a home for nurses, technicians and others engaged in essential employment incidental to the proper operation of the hospital. *Worley v. Johnston County*, 231 N. C. 592, 58 S. E. (2d) 99 (1950).

Applied in *Rex Hospital v. Wake County Board of Com'rs*, 239 N. C. 312, 79 S. E. (2d) 892 (1954).

§ 131-126.19. Purpose.—It is the purpose of this article to confer additional authority upon municipalities for the furnishing of hospital, clinic and similar services to the people of this State, through the construction, operation, and maintenance of hospital facilities and otherwise; and to this end to authorize municipalities to co-operate with other public and private agencies and with each other, and to accept assistance from agencies of this State or the federal government or from other sources. This article shall be liberally construed to effect these purposes. (1947, c. 933, s. 6.)

§ 131-126.20. General powers of municipalities in the construction, acquisition, operation and maintenance of hospital facilities.—(a) In addition to authority provided by existing laws, every municipality is authorized, out of any appropriations or other moneys made available for such purposes, to construct, operate, and maintain hospital facilities. For such purposes the municipality may use any available property that it may now or hereafter own or control and may, by purchase, grant, gift, devise, lease, condemnation or otherwise, acquire real or personal property or any interest therein. The municipality may make reasonable charges for the use of any such hospital facilities or may make them available without charge to such classes of persons as it considers necessary or desirable to carry out the purposes of this article.

(b) Any municipality may, by purchase, gift, devise, lease, condemnation or otherwise, acquire any existing hospital facilities.

(c) Any municipality may enter into a contract or other arrangement with any other municipality or other public agency of this or any other state or of the United States or with any individual, private organization or nonprofit association for the provision of hospital, clinic, or similar services. Pursuant to such contract or other arrangement, the municipality may pay for such services out of any appropriations or other moneys made available for such purposes. A municipality may lease any hospital facilities to any nonprofit association on such terms and subject to such conditions as will carry out the purposes of this article. (1947, c. 933, s. 6.)

Applied in *Rex Hospital v. Wake County Board of Com'rs*, 239 N. C. 312, 79 S. E. (2d) 892 (1954).

Stated in *Trustees of Watts Hospital v. Board of Com'rs*, 231 N. C. 604, 58 S. E. (2d) 696 (1950).

§ 131-126.21. Board of managers; county hospital authority.—(a) Vesting Authority in Municipal Officer, Board or Other Agency.—Any authority vested by this article in the municipality for the planning, establishment, construction, maintenance or operation of hospital facilities may be vested by resolution of the governing body of the municipality in an officer or board or other municipal agency whose powers, duties, compensation, and tenure shall be prescribed in the resolution; provided, however, that the expense of such planning, establishment, construction, maintenance or operation shall be a responsibility of the municipality.

(b) Board of County Commissioners May Establish Hospital Authority in Any County with Membership Representation from Town or City.—The board of county commissioners of any county may elect to establish a county hospital authority which shall be designated by the title or name of: “..... County Hospital Authority,” which shall consist of seven members, six of whom shall be appointed by the board of county commissioners and shall be composed of men and women representing the various dominant or primary interests of the county. Two of said members shall be appointed for a term of three years, two for a term of four years and two for a term of five years, and thereafter the term of office of each successor member shall be five years. In making said appointments the board of county commissioners of any county electing to establish a hospital authority under this subsection shall appoint three members of the said authority, who shall be residents of a town or city of said county, and three members who shall be residents of said county, or of cities or towns in said county other than the cities or towns in which the three other members appointed under this subsection reside. The seventh member of said authority shall be a member of the board of county commissioners of said county who shall serve in the capacity of a member at large, and whose term of office shall be commensurate with his term of office as a member of the board of county commissioners, and said member shall serve ex officio and because of his position as a member of the board of county commissioners. All vacancies in the office or position of a member of said hospital authority by death, resignation or otherwise shall be filled by appointments made by the board of county commissioners of said county and shall be for the unexpired term of the member causing said vacancy. No member of said hospital authority shall be eligible to succeed himself or herself except in cases where the appointment is made for an unexpired term. Any authority vested in a county by virtue of article 13B of chapter 131 of Volume 3B of the General Statutes or any authority or power that may be exercised by a hospital authority under G. S. 131-98 of article 12 of chapter 131, and as described and granted in said section, may be vested by resolution of the board of county commissioners of such county in the county hospital authority herein authorized, which such power and authority shall be applicable to the whole area of the county, and in addition to the purposes described in the statutes and articles heretofore referred to such power and authority shall also be exercised and delegated for the planning, establishment, construction, maintenance or operation of hospital facilities, clinics, public health centers, housing or quarters for local public health departments and centers, laboratories, outpatient departments and clinics, nurses’ home and training facilities, and any and all services, including central service facilities operated in connection with such hospitals, clinics, laboratories and other facilities. The said county hospital authority, however, shall exercise only such powers and duties as are prescribed in the resolution of the board of county commissioners granting and vesting such authority and powers in said county hospital authority, and the said board of county commissioners of said county shall fix in said resolution the compensation, travelling and other expenses, if any, which shall be paid to each member of said county hospital authority; provided, however, that the expenses of such planning, establishment, construction or operation of all the hospital facilities named and mentioned in this subsection shall be a responsibility of said county. (1947, c. 933, s. 6; 1955, c. 710, s. 1; c. 1363.)

Editor’s Note.—The first 1955 amendment made changes in the 1955 amendment made changes in the
 ment added subsection (b), and the second third sentence of the subsection.

Session Laws 1955, c. 710, s. 2, provided: "This act, authorizing the establishment of a county hospital authority, shall not be construed to repeal any other legislation or laws which authorize the appointment of a governing authority of a hospital by some other manner and by different processes of machinery than herein provided, and this act shall be construed to be enabling legislation, auxiliary to and supple-

mentary to, as well as in addition to, any and all other legislation providing for the management of the appointment of managers or trustees or other forms of governing authorities of hospitals and clinics."

Cited in *Trustees of Watts Hospital v. Board of Com'rs*, 231 N. C. 604, 58 S. E. (2d) 696 (1950); *Rex Hospital v. Wake County Board of Com'rs*, 239 N. C. 312, 79 S. E. (2d) 892 (1954).

§ 131-126.22. Appropriations and taxation.—(a) The governing body of any municipality having power to appropriate and raise money is hereby authorized to appropriate and to raise by taxation and otherwise sufficient moneys to carry out the provisions and purposes of this article.

(b) Notwithstanding any constitutional limitation or limitation provided by any general or special law, taxes may be levied by the governing body of a municipality for the special purposes of this article, for which special approval is hereby given, provided that the levy of such taxes shall be approved by the vote of a majority of the qualified voters of such municipality who shall vote on the question of levying such taxes in an election held for such purpose. Such election as to counties may be held at the same time and in the same manner as elections held under the provisions of article 9 of chapter 153 of the General Statutes, the same being designated as the County Finance Act, beginning with § 153-69 of the General Statutes and sections following, or such election as to cities and towns may be held under the Municipal Finance Act, the same being article 28 of chapter 160 of the General Statutes, beginning with § 160-377 of the General Statutes and sections following, or said elections may be held at any time fixed by the governing body of the municipality. (1947, c. 933, s. 6; 1949, c. 497, s. 5.)

Editor's Note.—The 1949 amendment rewrote the proviso at the end of the first sentence of subsection (b). See § 153-92.1.

§ 131-126.23. Financing cost of construction, acquisition and improvement; bond issues.—(a) The cost of planning and acquiring, establishing, developing, constructing, enlarging, improving, or equipping any hospital facility or the site thereof may be paid for by appropriation of moneys available therefor or wholly or partly from the proceeds of the sale of bonds or other obligations of the municipality as the governing body of the municipality shall determine. For such purposes a county may issue general obligation bonds, as authorized by the County Finance Act, the same being article 9 of chapter 153 of the General Statutes and a city or town as authorized by the Municipal Finance Act, the same being subchapter III of chapter 160 of the General Statutes and consisting of articles 25, 26, 27, 28, 29, 30, 31 and 32 of chapter 160 of the General Statutes, and any municipality may issue revenue bonds as authorized by article 34 of chapter 160 of the General Statutes, the same being designated as the Revenue Bond Act of 1938.

(b) Notwithstanding any limitations provided by the Constitution or by any general or special law as to the amount of bonds or obligations that may be issued, a municipality may issue bonds or obligations in excess of any such limitations for the purposes authorized by this article; provided, that such amount in excess of such constitutional limitation is referred to and approved by a majority of the qualified voters of said municipality voting in an election on such question.

(c) Notwithstanding any constitutional limitation or limitation provided by any general or special law, taxes may be levied by the governing body of a municipality for the purpose of financing the cost of operation, equipment and maintenance of any hospital facility authorized by this article; and the special approval of the General Assembly is hereby given for the levying of taxes for such purposes; provided, that the levy of such taxes shall be approved by the vote of a majority of the qualified voters of such municipality who shall vote on the question of levying such

taxes in an election held for such purpose. The rate or amount of such taxes for which a levy may be made hereunder shall be determined by the governing body of the municipality; and a ballot shall be furnished to each qualified voter at said election, which ballot may contain the words "For Hospital Facility Maintenance Tax (Briefly stating any other pertinent information)," and "Against Hospital Facility Maintenance Tax (Briefly stating any other pertinent information)," with squares in front of each proposition, in one of which squares the voter may make a cross mark (X); but any other form of ballot containing adequate information and properly stating the question to be voted upon shall be construed as being in compliance with this subsection. Such election as to counties may be held at the same time and in the same manner as elections held under article 9 of chapter 153 of the General Statutes, the same being designated as the County Finance Act, beginning with § 153-69 of the General Statutes and sections following, or such election as to cities and towns may be held under the Municipal Finance Act, the same being article 28 of chapter 160 of the General Statutes, beginning with § 160-377 of the General Statutes and sections following, or said elections may be held at any time fixed by the governing body of the municipality. The question of levying a tax for the operation and maintenance of hospital facilities as provided by this subsection may be submitted at the same time the question of issuing bonds is submitted as provided in this article or the question of a levy of taxes for operation and maintenance purposes may be submitted in a separate election according to the discretion and judgment of the governing body of the municipality. (1947, c. 933, s. 6; 1949, c. 497, s. 6.)

Editor's Note.—The 1949 amendment rewrote the proviso at the end of the first sentence of subsection (c). See § 153-92.1. For brief comment on the amendment, see 27 N. C. Law Rev. 454.

The enlargement of a county hospital is a public purpose for which a county ordi-

narily may expend unallocated nontax moneys on hand without vote of the people. *Rider v. Lenoir County*, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

Quoted in *Trustees of Watts Hospital v. Board of Com'rs*, 231 N. C. 604, 58 S. E. (2d) 696 (1950).

§ 131-126.24. Condemnation.—In the condemnation of property authorized by this article, the municipality shall proceed in the manner provided in chapter 40 of the General Statutes of North Carolina, or the charter of the municipality. For the purpose of making surveys and examinations relative to any condemnation procedures, it shall be lawful to enter upon any land doing no unnecessary damage. Notwithstanding the provisions of any other statute or of any applicable municipal charter, the municipality may take possession of any property to be condemned at any time after commencement of the condemnation procedure. The municipality shall not be precluded from abandonment of the condemnation of any such property in any case where possession thereof has not been taken. (1947, c. 933, s. 6.)

§ 131-126.25. Federal and State aid.—(a) Every municipality or nonprofit association is authorized to accept, receive, receipt for, disburse and expend federal and State moneys and other moneys, public or private, made available by grant, loan, gift or devise, to accomplish, in whole or in part, any of the purposes of this article. All federal moneys accepted under this section shall be accepted and expended by a municipality or nonprofit association upon such terms and conditions as are prescribed by the United States and as are consistent with State law; and all State moneys accepted under this section shall be accepted and expended by the municipality or nonprofit association upon such terms and conditions as are prescribed by the State and/or North Carolina Medical Care Commission. Unless otherwise prescribed by the agency from which such moneys were received, the chief financial officer of the municipality shall, on its behalf, deposit all moneys received pursuant to this section and shall keep them in separate funds designated according to the purposes for which the moneys were made available, in trust for such purposes.

(b) Out of funds made available by the State, the North Carolina Medical Care Commission shall make grants-in-aid, as provided in this subsection, to municipalities and/or nonprofit associations to acquire real estate and construct thereon hospital facilities, including the reconstruction, remodeling or addition to any hospital facilities which have been or may be acquired by such municipalities and/or nonprofit associations for use as community hospitals. The amount of State funds to be granted hereunder shall be determined in each case by the North Carolina Medical Care Commission in accordance with standards, rules and regulations as determined by the North Carolina Medical Care Commission.

Application for a grant under this subsection shall be made to the North Carolina Medical Care Commission by any municipality, acting separately or with one or more other municipalities, or by any nonprofit association, on such forms and in such manner as may be prescribed by the North Carolina Medical Care Commission. The North Carolina Medical Care Commission may establish such reasonable requirements for approval as it deems necessary or desirable to effectuate the purposes of this article. The North Carolina Medical Care Commission shall give preference to applications in accordance with their priority in the hospital construction program established pursuant to the Federal Hospital Survey and Construction Act. (1947, c. 933, s. 6.)

§ 131-126.26. Municipal aid.—If the governing body of any municipality determines that the public interest and the interests of the municipality will be served by aiding another municipality or municipalities or a nonprofit association or nonprofit associations to provide physical facilities for furnishing hospital, clinic, or similar services to the people of the municipality, such municipality, may render such aid by gift of real or personal property, or lease or loan thereof with or without rental or charge, or by gift of money, or loan thereof with or without interest. For the purpose of raising money to be given or loaned as aforesaid, such municipality shall have power to levy taxes as provided in § 131-126.22 and to issue general obligation bonds as provided in § 131-126.23, as though such taxes were to be levied and such bonds were to be issued to finance hospital facilities owned by the municipality. No bonds shall be issued under this section, however, except for the construction of new buildings, the expansion, remodeling and alteration of existing buildings, and the equipment of buildings, or for one or more of said purposes. For the purpose of applying the provisions of the County Finance Act and the Municipal Finance Act to bonds authorized by this section, the bonds shall be deemed to be bonds issued to finance public buildings owned by the municipality issuing the bonds. The special approval of the General Assembly is hereby given for the levying of the taxes authorized by this section, including taxes sufficient to pay the principal of and the interest on bonds issued under this section. The proceeds of the sale of such bonds may be expended by the municipality that issues them or by the municipality or municipalities or nonprofit association or nonprofit associations in aid of which the bonds are issued, as may be determined by the governing body of the municipality that issued the bonds. If any building for which bonds are issued under this section shall, prior to the final date of maturity of the bonds, cease for 90 days or more to be used for the purpose of furnishing hospital, clinic, or similar services to the people of the municipality that issued the bonds, or ceased to be owned by a municipality or a nonprofit association, the municipality that issued the bonds shall be entitled to recover from the owners of such building, or from their predecessors entitled since the date of the bonds issued for such building, the amount of such bonds remaining outstanding and unpaid. Such right of recovery shall, however, be subordinate to any claim of the United States on account of aid in financing such building. Any municipality that grants aid under this section may require assurance from the grantee that the grantee will furnish hospital, clinic, or similar services during a specified period to the people of the municipality that grants such aid. Such assurance may be given by lease, deed of trust, mortgage,

contract to convey, lien, trust indenture, or other means. (1947, c. 933, s. 6; 1951, c. 1143, s. 1.)

Editor's Note.—The 1951 amendment rewrote this section.

Title to Hospital.—By virtue of this section the acquisition of title to a hospital by the county is not a condition precedent to the extension of aid by the municipality.

Trustees of Watts Hospital v. Board of Com'rs, 231 N. C. 604, 58 S. E. (2d) 696 (1950).

Cited in Rex Hospital v. Wake County Board of Com'rs, 239 N. C. 312, 79 S. E. (2d) 892 (1954).

§ 131-126.27. Joint operations.—All powers, privileges and authority granted to any municipality by this article may be exercised and enjoyed jointly with any other municipality. To this end any two or more municipalities may enter into agreements with each other for the acquisition, construction, improvement, maintenance, or operation of hospital facilities. Such agreement may provide for:

- (1) The appointment of a board, composed of representatives of the parties to the agreement, to supervise and manage such hospital facilities;
- (2) The authority and duties of such board and the compensation of its members;
- (3) The proportional share of the costs of acquisition, construction, improvement, maintenance, or operation of the hospital facilities and the provision of funds therefor;
- (4) Duration, amendment, and termination of the agreement and the disposition of property on its termination; and
- (5) Such other matters as are necessary or desirable in the premises. (1947, c. 933, s. 6.)

§ 131-126.28. Public purpose; county and municipal purpose.—The acquisition of any land or interest therein pursuant to this article, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, and regulation of hospital facilities and the exercise of any other powers herein granted to municipalities, to be severally or jointly exercised, are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity; and in the case of any county, are declared to be county functions and purposes as well as public and governmental; and in the case of any municipalities other than a county, are declared to be municipal functions and purposes as well as public and governmental. All land and other property and privileges acquired and used by or on behalf of any county or other municipality in the manner and for the purpose enumerated in this article shall and are hereby declared to be acquired and used for public and governmental purposes as a matter of public necessity, and for county or municipal purposes, respectively. (1947, c. 933, s. 6.)

§ 131-126.29. Implied incidental powers.—In addition to the general and special powers conferred by this article, every municipality is authorized to exercise such powers as are necessarily incidental to the exercise of such general and special powers. All powers granted by this article to municipalities are specifically declared to be granted to the counties of this State, any other statute to the contrary notwithstanding. (1947, c. 933, s. 6.)

§ 131-126.30. Short title.—The article may be cited as the "Municipal Hospital Facilities Act." (1947, c. 933, s. 6.)

ARTICLE 13C.

Creation of Hospital Districts with Authority to Issue Bonds and Levy Taxes for Hospital Purposes.

§ 131-126.31. Petition for formation of hospital district; hearing.—Upon receipt of a petition, signed by at least five hundred of the qualified voters of the

territory described in such petition, praying that such territory be created into a hospital district, the North Carolina Medical Care Commission, with the approval of the board of county commissioners of the county in which such proposed hospital district is located, shall cause notice to be given by posting at the courthouse door, and at three public places in such proposed hospital district, and by three weekly publications in a newspaper circulating in such proposed hospital district, that on a date to be named in such notice, which shall not be earlier than twenty days after the first posting and publication of such notice, it will hold a public hearing at a designated place within the proposed hospital district or some designated place within the county in which the district is to be created, upon the question of creating a hospital district comprising the territory described in such petition and set forth in such notice, and that any taxpayer or other interested person may appear and be heard at the time and place set forth in such notice.

Such petition shall set forth:

- (1) A description of the territory to be embraced within the proposed district,
- (2) The names of all municipalities or parts thereof located within the area,
- (3) The names of all publicly owned hospitals located within the area,
- (4) The purpose or purposes sought to be accomplished by the creation of the proposed district, and
- (5) The name of the proposed district.

At the time and place set forth in the notice of hearing on such petition, the North Carolina Medical Care Commission, or its duly authorized representative, shall hear all interested persons and may adjourn the hearing from time to time.

A hospital district may be established under this article in those territories which have less than eleven hundred (1100) qualified voters resident therein upon petition of two hundred fifty (250) qualified voters of such territory requesting that such territory be created into a hospital district. (1949, c. 766, s. 5; 1953, c. 1045, s. 1; 1959, c. 877.)

Editor's Note.—The 1953 amendment changed the required signers of the petition from "not less than one hundred citizens" to "at least five hundred of the qualified voters," inserted the second paragraph and made other changes.

The 1959 amendment added the last paragraph of this section.

This article as amended is constitutional. *Williamson v. Snow*, 239 N. C. 493, 80 S. E. (2d) 262 (1954).

Article Does Not Unlawfully Delegate

Legislative Power to Commission.—To clothe the Medical Care Commission with the power to hear and determine whether a hospital is needed in a particular area and whether it is advisable to create a hospital district in the manner prescribed and authorized by this article, as amended, in order to meet such need, is not an unlawful delegation of legislative power. *Williamson v. Snow*, 239 N. C. 493, 80 S. E. (2d) 262 (1954).

§ 131-126.32. Result of hearing; name of district; limitation of actions.—If, after such hearing, the North Carolina Medical Care Commission shall deem it advisable to create such hospital district, it shall adopt a resolution creating such district, determining that the residents of all the territory to be included in such district will be benefited by the creation of such district; and defining the territory comprising such district, which shall be either the territory described in such petition or a part of such territory; provided, however, that all the territory embraced in a hospital district shall be located in one county; and provided, further, that no municipality or part thereof shall be included in any hospital district unless the governing body of such municipality shall have approved thereof by resolution and shall have filed with the North Carolina Medical Care Commission a certified copy of such resolution. Each hospital district so created shall be designated by the North Carolina Medical Care Commission as the "..... Hospital District of County," inserting in the blank spaces some name identifying the locality and the name of the county.

Notice of the creation of such hospital district shall be given by publication of the resolution of the North Carolina Medical Care Commission creating such district, once in each of two successive weeks after the adoption of such resolution, in

the newspaper in which the notice of hearing mentioned above in § 131-126.31 of this article was published. A notice substantially in the following form (The blanks being first properly filled in), with the printed or written signature of the executive secretary of the commission appended thereto, shall be published with the resolution:

The foregoing resolution was passed by the North Carolina Medical Care Commission on the day of, 19.., and was first published on the day of, 19...

Any action or proceeding questioning the validity of said resolution or the creation of said Hospital District of County or the inclusion in said district of any of the territory described in said resolution, must be commenced within thirty days after the first publication of said resolution.

.....
Executive Secretary of the North
Carolina Medical Care Commission.

Any action or proceeding in any court to set aside a resolution of the North Carolina Medical Care Commission creating any hospital district, or questioning the validity of any such resolution or the creation of any hospital district or the inclusion in any such district of any of the territory described in the resolution creating such district, must be commenced within thirty days after the first publication of such resolution and such notice. After the expiration of such period of limitation, no right of action or defense founded upon the invalidity of such resolution or the creation of such district or the inclusion of any territory in such district shall be asserted, nor shall the validity of such resolution or the creation of such district or the inclusion of such territory be open to question in any court upon any ground whatever, except in an action or proceeding commenced within such period. (1949, c. 766, s. 5; 1951, c. 805; 1953, c. 1045, s. 2.)

Editor's Note.—The 1953 amendment rewrote this section as changed by the 1951 amendment.

Resolution of Commission.—The provision in this section requiring the adoption of a resolution "determining that the residents of all the territory to be included in such district will be benefited by the crea-

tion of such district" is nothing more than a requirement that the Medical Care Commission, before creating a hospital district, shall determine that a hospital is needed in the area included within the boundaries of such proposed hospital district. *Williamson v. Snow*, 239 N. C. 493, 80 S. E. (2d) 262 (1954).

§ 131-126.33. Election for bond issue; method of election.—Whenever five hundred or more qualified voters residing in such hospital district shall file with the board of county commissioners of the county in which such hospital district is located a petition requesting an election, the board of county commissioners shall order a special election to be held in any such hospital district for the purpose of voting upon the question of issuing bonds and levying a sufficient tax for the payment thereof for the purpose of paying all or a part of the cost of planning and acquiring, establishing, developing, constructing, enlarging, improving or equipping any type of hospital, clinic or public health center, including relating facilities such as laboratories, outpatient departments, nurses' homes and training facilities operated in connection with hospitals and purchasing sites in such district for any one or more of said purposes, including any public or nonprofit hospital facility. In all such elections, the board of county commissioners of such county shall designate the polling place or places, appoint the registrars and judges, and canvass and judicially determine the results of the election upon filing with it of the election returns by the officers holding the election and shall record such determination on their records. The notice of election shall be given by publication at least three times in some newspaper published or circulating in such hospital district. The notice shall state the date of the election, the place or places at which the election will be held, the boundary lines of such hospital district unless the hospital district is coterminous with a township in said county (in which event the notice shall so state), the maximum amount of bonds to be issued, the purpose or purposes for

which the bonds are to be issued, and the fact that a sufficient tax will be levied on all taxable property within the hospital district for the payment of the principal and interest of the bonds. The first publication of the notice shall be at least thirty days before the election. A new registration of the qualified voters of such hospital district shall be ordered and notice of such new registration shall be deemed to be sufficiently given by publication once in some newspaper published or circulating in such hospital district at least thirty days before the close of the registration books. This notice of registration may be considered one of three notices required of the election. Such published notice of registration shall state the days on which the books will be open for registration of the voters and the place or places at which they will be open on Saturdays. The books of such new registration shall close on the second Saturday before the election. The Saturday before the election shall be challenge day; and except as otherwise provided in this article, such election shall be held in accordance with the laws governing the general elections. The form of the question, as stated on the ballot or ballots, shall be in substantially the words: "For the issuance of \$. Hospital Bonds and the levying of a sufficient tax for the payment thereof", and "Against the issuance of \$. Hospital Bonds and the levying of a sufficient tax for the payment thereof", with squares in front of each proposition, in one of which squares the voter may make a cross (X) mark; but any other form of ballot properly stating the question to be voted upon shall be construed as being in compliance with this section. (1949, c. 766, s. 5; 1953, c. 1045, s. 3.)

Editor's Note.—The 1953 amendment substituted near the beginning of the first sentence "qualified voters residing in" for "adult residents of," deleted "and/or notes,"

added the part of the last sentence following the semicolon, and made other changes.

Cited in *Williamson v. Snow*, 239 N. C. 493, 80 S. E. (2d) 262 (1954).

§ 131-126.34. Canvassing vote and determining results.—At the close of the polls, the election officers shall count the votes and make returns thereof to the board of county commissioners, which board shall, as soon as practicable after the election, judicially pass upon the returns and judicially determine and declare the results of such election, which determination shall be spread upon the minutes of said board. The returns shall be made in duplicate, one copy of which shall be delivered to the board of county commissioners as aforesaid and the other filed with the clerk of the superior court of the county in which the hospital district is situated. The board of county commissioners shall prepare a statement showing the number of votes cast for and against the bonds and/or notes, and declaring the result of the election, which statement shall be signed by the chairman of the board and attested by the clerk, who shall record it in the minutes of the board and file the original in his office and publish it once in a newspaper published or circulating in such hospital district. (1949, c. 766, s. 5.)

§ 131-126.35. Limitation of actions.—No right of action or defense founded upon the invalidity of such election or of any proceedings or steps taken in connection therewith shall be asserted, nor shall the validity of such election or the right or duty to levy sufficient tax for the payment of the principal and interest of such bonds, be open to question in any court upon any ground whatever, except in an action or proceeding commenced within thirty days after the publication of such statement of results as provided in the preceding section. (1949, c. 766, s. 5; 1953, c. 1045, s. 4.)

Editor's Note.—The 1953 amendment rewrote this section.

§ 131-126.36. Issuance of bonds and levy of taxes.—If a majority of the votes cast shall be in favor of the issuance of such bonds and the levy of such tax, then the board of county commissioners may provide by resolution, which resolution may be finally passed at the same meeting at which it is introduced, for the issuance of such bonds, which bonds shall be issued in the name of the hospital district and

shall be payable exclusively out of taxes to be levied in such hospital district. They shall be issued in such form and denominations, and with such provisions as to the time, place and medium of payment of principal and interest as the said board of county commissioners may determine, subject to the limitations and restrictions of this article. They may be issued as one issue, or divided into two or more separate issues, and in either case may be issued at one time or in blocks from time to time. When bonds are to be issued, they shall be serial bonds and each issue thereof shall so mature that the aggregate principal amount of the issue shall be payable in annual installments or series, beginning not more than three years after the date of the bonds of such issue and ending not more than thirty years after such date. No such installment shall be more than two and one-half times as great in amount as the smallest prior installment of the same bond issue. The bonds shall bear interest at a rate not exceeding six per cent (6%) per annum, payable semiannually, and may have interest coupons attached, and may be made registerable as to principal or as to both principal and interest under such terms and conditions as may be prescribed by said board. They shall be signed by the chairman of the board of county commissioners, and the seal of the county shall be affixed to or impressed upon each bond and attested by the register of deeds of the county or by the clerk of said board; and the interest coupons shall bear the printed, lithographed or facsimile signature of such chairman. The delivery of bonds, signed as aforesaid by officers in office at the time of such signing, shall be valid, notwithstanding any changes in office occurring after such signing. (1949, c. 766, s. 5; 1953, c. 1045, s. 5.)

Editor's Note.—The 1953 amendment deleted "and/or notes" from several places in the section and made other changes.

§ 131-126.37. Collection and application of tax.—The board of county commissioners is hereby authorized and directed to levy annually a special tax, ad valorem, on all taxable property in the hospital district in which the election was held, sufficient to pay the principal and interest of the bonds as such principal and interest become due. Such special tax shall be in addition to all other taxes authorized to be levied in such district or in such unit. The taxes provided for in this section shall be collected by the county officer collecting other taxes and be applied solely to the payment of principal and interest of such bonds. (1949, c. 766, s. 5; 1953, c. 1045, s. 8.)

Editor's Note.—The 1953 amendment deleted "and/or notes" formerly appearing after "bonds" in the first and third sentences.

Tax Is General Tax and Not Special Assessment.—A tax levied pursuant to the approval of the voters in a hospital district for the purpose of establishing and maintaining a public hospital in the district is

a general tax levied for a special purpose as distinguished from a special assessment, and therefore a hearing on the benefits to be conferred upon the property within the district, and the exclusion from the tax of property not benefited, are not required. *Williamson v. Snow*, 239 N. C. 493, 80 S. E. (2d) 262 (1954).

§ 131-126.38. Tax levy for operation, equipment and maintenance.—The board of county commissioners of the county in which such hospital district is located may cause to be levied a tax for the purpose of financing the cost of operation, equipment and maintenance of any hospital facility authorized by this article, including any public or nonprofit hospital facility: Provided, that the levy of such tax is approved by a majority of the qualified voters of the hospital district who shall vote thereon in an election held for such purpose. The rate or amount of such taxes for which a levy may be made hereunder shall be determined by the board of county commissioners of such county; and a ballot shall be furnished to each qualified voter at said election, which ballot may contain the words "For Hospital Facility Maintenance Tax (Briefly stating any other pertinent information)," and "Against Hospital Facility Maintenance Tax (Briefly stating any other pertinent information)," with squares in front of each proposition, in one of which squares the voter may make a cross mark (X); but any other form of ballot containing

adequate information and properly stating the question to be voted upon shall be construed as being in compliance with this section. Such election may be held at any time fixed by the board of county commissioners of such county, and the question of levying a tax for the operation and maintenance of hospital facilities, as provided by this section, may be submitted at the same time the question of issuing bonds is submitted, as provided in this article, or the question of levying a tax for operation and maintenance purposes may be submitted in a separate election according to the discretion and judgment of the board of county commissioners of the county in which the hospital district is located. Such election for the approval of a levy of taxes for costs of operation, equipment and maintenance of any hospital facility, as authorized by this article, shall be held and conducted in the same manner as elections are held and conducted to determine the question of the issuance of bonds as provided in this article. (1949, c. 766, s. 5; 1953, c. 1045, s. 6.)

Editor's Note.—The 1953 amendment deleted the provision relating to petition for bond issue formerly appearing at the beginning of this section, and substituted "may" in the first sentence for "shall."

§ 131-126.38a. Counties authorized to borrow money on behalf of hospital districts to pay certain appropriations and bonds.—Counties may borrow money on behalf of hospital districts for the following purposes:

- (1) Paying appropriations made for the current fiscal year in anticipation of the collection of the tax of such fiscal year levied under authority of § 131-126.38, but no such loan shall be made for a district if the amount thereof, together with the amount of similar previous loans for the district remaining unpaid, shall exceed fifty per centum (50%) of the amount of uncollected taxes levied upon property of the district under the authority of § 131-126.38 for the fiscal year in which the loan is made, as determined by the chief financial officer of the county and certified by him in writing to the board of commissioners of the county, and no such loan shall be payable later than thirty days after the expiration of such fiscal year.
- (2) Paying the principal or interest of bonds of a district due or to become due within four months, and not otherwise adequately provided for, in anticipation of the collection of the tax levied upon property of the district under authority of § 131-126.37 either in the fiscal year in which the loan is made or in the next ensuing fiscal year, but no such loan shall be payable later than the end of such next ensuing fiscal year: Provided, if such loan, or any renewal thereof, shall not be paid within the fiscal year in which the same is made such tax shall be levied on property of the district in such next ensuing fiscal year sufficient to pay the same.

Negotiable notes shall be issued for moneys borrowed pursuant to this section, which notes may be renewed from time to time and money may be borrowed upon new notes from time to time for the payment of any indebtedness evidenced thereby, but all such notes shall mature within the time limited by this section for the payment of the original loan. All such notes shall be issued in the name of the district and shall be authorized by resolution of the board of commissioners of the county, which resolution shall fix the face amount of the notes, their date and maturity date, and the actual or maximum interest rate thereon not exceeding the maximum rate permitted by law. A resolution authorizing notes for money borrowed for the purpose stated in subdivision (2) of this section shall contain a description of the bonds the principal or interest of which is to be paid with the proceeds of the notes, including the respective amounts of such principal or interest and the date or dates on which the same is due and payable. All such notes shall be executed under the seal of the county by the chairman and clerk of the board of commissioners, or by any two officers designated by said board for that purpose. No such notes shall be valid unless, in the case of notes issued for the purpose stated in subdivision (1)

of this section, each such note contains a statement written or printed on the face or reverse thereof and signed by the chief financial officer of the county in the words "This note and all other similar tax anticipation notes of the district amount to less than fifty per centum (50%) of the uncollected tax levied in the district in the current fiscal year," and, in the case of notes issued for the purpose stated in subdivision (2) of this section, each such note contains a statement written or printed on the face or reverse thereof and signed by said chief financial officer in the words "This note is issued for the payment of principal or interest of bonds of the district." (1957, c. 869, s. 1.)

§ 131-126.39. Article supplemental to other grants of authority.—The powers conferred by this article shall be regarded as supplemental and in addition to powers conferred by other laws and shall not supplant or repeal any existing powers for the issuance of bonds, or any provisions of law for the payment of bonds issued under such powers, or for the custody of moneys provided for such payment. (1949, c. 766, s. 5; 1953, c. 1045, s. 8.)

Editor's Note.—The 1953 amendment deleted "and/or notes" formerly appearing after "bonds" in two places.

§ 131-126.40. Approval of Local Government Commission.—This article shall constitute full authority for the things herein authorized and no proceedings, publications, notices, consents or approvals shall be required for the doing of the things herein authorized, except such as are herein prescribed and required, and except that the provisions of the Local Government Act then in force as to the approval of the issuance of bonds or notes and endorsements of such approval upon such bonds or notes and as to the sale of bonds or notes and the disposition of the proceeds, shall be applicable to the bonds or notes authorized by this article. The proceeds shall be paid out only upon order of the board of county commissioners. (1949, c. 766, s. 5; 1953, c. 1045, s. 8; 1957, c. 869, s. 2.)

Editor's Note.—The 1953 amendment deleted "and/or notes" formerly appearing after "bonds" in several places near the end of the first sentence.

The 1957 amendment inserted "or notes" after "bonds" in several places in the first sentence.

§ 131-126.40a. Governing body of district; powers.—The board of county commissioners of the county in which a hospital district is created under the provisions of this article shall be the governing body of such district, and all of the provisions of the Municipal Hospital Facilities Act shall apply to such hospital district and to such board of county commissioners as the governing body thereof. (1953, c. 1045, s. 7.)

Stated in *Williamson v. Snow*, 239 N. C. 493, 80 S. E. (2d) 262 (1954).

§ 131-126.40b. Alternative procedures.—(a) Notwithstanding any other provisions of this article, a hospital district may be created by a board of county commissioners, in its own discretion, by appropriate resolution, without following the procedure set forth in G. S. 131-126.31 and G. S. 131-126.32. This authority shall exist only when one hospital district already exists or when a special tax levy for hospital purposes has heretofore been authorized or is now authorized with respect to a portion of the county and the power herein granted to create a hospital district is limited to establishing as a hospital district all the area or territory in the county lying outside of the existing hospital district or outside the portion or area with respect to which a hospital tax levy has heretofore been authorized or is now authorized.

(b) After a district is established by the adoption of the above-referred-to resolution, the board of county commissioners, in its discretion, may call for an election or elections, as authorized by this article, without receiving any petition therefor.

The first publication of the notice of an election shall be at least twenty days before the election, but is not required to be earlier. It shall not be necessary to order a new registration for the purpose of any such election unless the board of county commissioners, in its discretion, shall determine to do so, and said board of county commissioners may designate judges, registrars and other election officers for general election purposes to hold and conduct said election. The board of county commissioners may use the registration books and other election records available for the hospital district. In the event no new registration is ordered, registration books shall be kept open, and need to be kept open only, for a fifteen-day period preceding the election, but said period shall include at least the three Saturdays immediately preceding the election and the registrar of each precinct shall attend at the precinct polling place with his registration books between the hours of nine o'clock A. M. and six o'clock P. M. The last day the registration books are open which shall be the third Saturday described above, shall be challenge day.

(c) The provisions of this section shall be supplemental to all other provisions of this article and when a board of county commissioners exercises power pursuant to this section, all of the provisions of this article shall be applicable except as modified in this section. (1959, c. 1074.)

ARTICLE 13D.

Further Authority of Subdivisions of Government to Finance Hospital Facilities.

§ 131-126.41. Authority to pledge, encumber or appropriate certain funds to secure operating deficits of publicly owned or nonprofit hospitals.—The board of county commissioners of any county or the governing authority of any city or town is hereby authorized, in its discretion, to pledge, encumber or appropriate funds from any surplus funds, unappropriated funds, or funds derived from profits of alcoholic beverage control stores for the purpose of guaranteeing the operating deficit of any publicly owned or nonprofit hospital. The special approval of the General Assembly is hereby given to the above enumerated appropriations and authorizations for such special purposes. (1949, c. 767, s. 1.)

§ 131-126.42. Issuance of bonds and notes for construction, operation and securing operating deficits.—The special approval of the General Assembly is hereby given to the issuance by counties, cities and towns of bonds and notes for the special purpose of building, erecting and constructing any publicly owned or nonprofit hospital and for the purpose of financing the cost of operation, equipment and maintenance of any such hospital or for the purpose of securing or guaranteeing any operating deficit of any such hospital, and the special approval of the General Assembly is hereby given to all counties, cities and towns to levy property taxes for the payment of said bonds and notes and interest thereon. (1949, c. 767, s. 2.)

§ 131-126.43. Tax levy for construction, operation and securing operating deficits.—The special approval of the General Assembly is hereby given to the governing authority of any county, city or town for the levying of a tax on property in addition to other taxes for general purposes, not to exceed ten cents (10c) on the one hundred dollars (\$100.00) value of property annually for the purpose of financing the cost of operation, equipment and maintenance of any publicly owned or nonprofit hospital or to guarantee or secure the operating deficit of any such hospital. (1949, c. 767, s. 3.)

§ 131-126.44. Article construed as supplementary to existing hospital facility laws.—The provisions of this article shall not be construed as repealing the provisions of any other statute or act authorizing the issuance of bonds and the levying of taxes for the construction, maintenance and operation of hospitals, health centers or other hospital facility as the words "hospital facility" are defined in § 131-126.18 and likewise providing for a vote of the qualified voters in an election

for the approval of such bond issue or tax levy. This article shall be construed to be additional and supplementary to all statutes and provisions of law providing for such hospital facilities, their construction and operation by bond issues and tax levies approved by the vote of the qualified voters in an election and shall not be construed to repeal the provisions of such statutes and laws nor in any manner affect existing statutes provided for such purposes. (1949, c. 767, s. 4.)

ARTICLE 14.

Cerebral Palsy Hospital.

§ 131-127. Creation of hospital; powers.—An institution, to be known and designated as “The North Carolina Cerebral Palsy Hospital” is hereby created and such institution is authorized and empowered to accept and use donations and appropriations and do all things necessary and requisite to be done in furtherance of the purpose of its organization and existence as herein set forth. (1945, c. 504, s. 1; 1953, c. 893, s. 1.)

Editor’s Note.—The 1953 amendment changed the name of the institution from “the North Carolina Hospital for Treatment of Spastic Children” to “The North Carolina Cerebral Palsy Hospital.”

§ 131-128. Governor to appoint board of directors; terms of office; filling vacancies.—The Governor shall appoint a board of directors consisting of nine (9) members for said hospital, three of whom shall be appointed for two years, three for four years, and three for six years, who shall hold their office until their successors have been appointed. At the end of the term of office of each of said directors, their successors shall each be named for a term of six years. The Governor shall fill all vacancies occurring by reason of death, resignation, or otherwise. (1945, c. 504, s. 2.)

§ 131-129. Board authorized to acquire lands and erect buildings.—The board of directors, with the approval of the Governor and the Council of State, is authorized to secure by gift or purchase suitable real estate within the State at such place as the board may deem best for the purpose, and to erect or improve buildings thereon, for carrying out the purposes of the institution; but no real estate shall be purchased or any commitments made for the erection or permanent improvements of any buildings involving the use of State funds unless and until an appropriation for permanent improvements of the institution is expressly authorized by the General Assembly. (1945, c. 504, s. 3.)

§ 131-130. Operation pending establishment of permanent quarters.—In order to provide for the operation of the said institution prior to the time that permanent quarters can be established, the board of directors, with the approval of the Governor and Council of State, is authorized and empowered to enter into an agreement with any other State institution or agency for the temporary use of any State owned property which such other State institution or agency may be able and willing to divert for the time being from its original purpose; and any other State institution or agency, which may be in possession of real estate suitable for the purpose of The North Carolina Cerebral Palsy Hospital upon such terms as may be mutually agreed upon. (1945, c. 504, s. 4; 1953, c. 893, s. 2.)

Editor’s Note.—The 1953 amendment substituted “The North Carolina Cerebral Palsy Hospital” for “The North Carolina Hospital for Treatment of Spastic Children.”

§ 131-131. Board to control and manage hospital.—The board of directors shall have the general superintendence, management, and control of the institution; of the grounds and buildings, officers, and employees thereof; of the patients therein and all matters relating to the government, discipline, contracts, and fiscal concerns thereof; and may make such rules and regulations as may seem to them necessary for carrying out the purposes of the institution. And the board shall have the right

to keep, restrain, and control the patients of the institution until such time as the board may deem proper for their discharge under such proper and humane rules and regulations as the board may adopt. (1945, c. 504, s. 5.)

§ 131-132. Appointment and discharge of superintendent; qualifications and compensation.—The board of directors shall appoint a superintendent of the institution, who shall be a person of professional training and experience in the care and treatment of spastic ailments, and may fix the compensation of the superintendent, subject to the approval of the Budget Bureau, and may discharge the superintendent at any time for cause. (1945, c. 504, s. 6.)

§ 131-133. Aims of hospital; application for admission.—The prime purpose and aim of the North Carolina Cerebral Palsy Hospital is to treat, care for, train, and educate as their condition will permit all cerebral palsied children of training age in the State who are capable of being rehabilitated; to disseminate knowledge concerning the extent, nature, and prevention of such disabling ailments, and to that end, subject to such rules and regulations as the board of directors may adopt, there shall be received into said hospital, cerebral palsied children under the age of twenty-one years when, in the judgment of the board of directors, it is deemed advisable. The hospital may be made available for the treatment of patients with other neuromuscular and skeletal disabilities who are in need of rehabilitation so long as doing so does not in any way deprive a cerebral palsied child qualified as their condition will permit for admission for treatment, care, training and education.

Application for the admission of a child must be made by a parent or person standing in loco parentis or by the person, institution or agency having legal custody of the child. (1945, c. 504, s. 7; 1953, c. 893, s. 2; 1957, c. 170, s. 1.)

Editor's Note.—The 1953 amendment substituted "the North Carolina Cerebral Palsy Hospital" for "the North Carolina Hospital for Treatment of Spastic Children." The 1957 amendment substituted "cere-

bral palsied children" for "spastic children" and made other changes in the first sentence, inserted the second sentence and rewrote the former second sentence which was made the second paragraph.

§ 131-134. Rules, regulations and conditions of admission; payment for treatment.—The board of directors is hereby authorized and empowered to promulgate rules, regulations, and conditions of admission of patients to the hospital, but in so doing shall not exclude any patient otherwise qualified for admission because of an inability to pay for examination and treatment, and all indigent patients otherwise qualified for admission shall be received without regard to their indigent condition when there is space and accommodation available for such patients. The board of directors shall require all patients who are able, including those persons who are able and who are legally responsible for patients, and agencies or organizations including employers who are legally responsible for their care and insurance carriers which have issued policies of insurance covering such treatment and care of such patients, within the limits of insurance coverage, to pay the reasonable cost of treatment and care and upon their refusal to do so, the said board of directors is authorized and empowered to institute action in the name of the hospital in the county in which it is located for the collection thereof: Provided, that if the amount is less than two hundred dollars (\$200.00) the said action shall be instituted in the county where the defendant resides. (1945, c. 504, s. 8; 1957, c. 170, s. 2.)

Editor's Note.—The 1957 amendment rewrote the second sentence.

§ 131-135. Discharge of patients.—Any patient entered in the hospital may be discharged therefrom or returned to his or her parents or guardian when, in the judgment of the directors, it will not be beneficial to such patient or to the best interest of the hospital to be longer retained therein. (1945, c. 504, s. 9.)

§ 131-136. **Board to make further investigations.**—The board of directors shall further investigate and study the need and requirements for establishing and equipping a hospital for the care and treatment of mentally normal cerebral palsy (spastic) patients and determine the annual per capita cost for the treatment of such patients, and cause to be prepared necessary plans and specifications for providing and equipping a hospital with a capacity of fifty (50) beds. Said board of directors shall present to the next session of the General Assembly such plans and specifications together with its recommendations as to the establishment of such a hospital, including a site for its location. To meet the expense of preparing said plans and specifications and other incidental expenses of the board, there is hereby appropriated out of the contingency and emergency fund of the State such an amount as the Governor and Council of State may consider necessary. (1945, c. 504, s. 10.)

Chapter 132.

Public Records.

Sec.	Sec.
132-1. Public records defined.	132-8.1. Records management program administered by Department of Archives and History; establishment of standards, procedures, etc.; surveys.
132-2. Custodian designated.	132-8.2. Selection and preservation of records considered essential; making or designation of preservation duplicates; force and effect of duplicates or copies thereof.
132-3. Destruction of records regulated.	132-9. Violation of chapter a misdemeanor.
132-4. Disposition of records at end of official's term.	
132-5. Demanding custody.	
132-6. Inspection and examination of records.	
132-7. Keeping records in safe places; copying or repairing; certified copies.	
132-8. Assistance by and to State Department of Archives and History.	

§ 132-1. Public records defined.—Public records comprise all written or printed books, papers, letters, documents and maps made and received in pursuance of law by the public offices of the State and its counties, municipalities and other subdivisions of government in the transaction of public business. (1935, c. 265, s. 1.)

§ 132.2. Custodian designated.—The public official in charge of an office having public records shall be the custodian thereof. (1935, c. 265, s. 2.)

§ 132-3. Destruction of records regulated.—No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with § 121-5, without the consent of the State Department of Archives and History. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, defaces, mutilates or destroys it shall be guilty of a misdemeanor and upon conviction fined not less than ten dollars nor more than five hundred dollars. (1935, c. 265, s. 3; 1943, c. 237; 1953, c. 675, s. 17; 1957, c. 330, s. 2.)

Cross Reference.—Further as to destruction of records, see § 121-5.

Editor's Note.—The 1943 amendment substituted "State Department of Archives and History" for "North Carolina Historical

Commission."

The 1953 amendment substituted "§ 121-6" for "§ 121-4" in the first sentence, and the 1957 amendment changed it to "§ 121-5."

§ 132-4. Disposition of records at end of official's term.—Whoever has the custody of any public records shall, at the expiration of his term of office, deliver to his successor, or, if there be none, to the State Department of Archives and History, all records, books, writings, letters and documents kept or received by him in the transaction of his official business; and any such person who shall refuse or neglect for the space of ten days after request made in writing by any citizen of the State to deliver as herein required such public records to the person authorized to receive them shall be guilty of a misdemeanor and upon conviction fined not exceeding five hundred dollars. (1935, c. 265, s. 4; 1943, c. 237.)

Editor's Note.—The 1943 amendment substituted "State Department of Archives and History" for "North Carolina Historical Commission."

§ 132.5. Demanding custody.—Whoever is entitled to the custody of public records shall demand them from any person having illegal possession of them, who shall forthwith deliver the same to him. If the person who unlawfully possesses public records shall without just cause refuse or neglect for ten days after a request made in writing by any citizen of the State to deliver such records to their lawful custodian, he shall be guilty of a misdemeanor and upon conviction fined not exceeding five hundred dollars. (1935, c. 265, s. 5.)

§ 132-6. Inspection and examination of records.—Every person having custody of public records shall permit them to be inspected and examined at reasonable

times and under his supervision by any person, and he shall furnish certified copies thereof on payment of fees as prescribed by law. (1935, c. 265, s. 6.)

§ 132-7. Keeping records in safe places; copying or repairing; certified copies.—Insofar as possible, custodians of public records shall keep them in fireproof safes, vaults, or rooms fitted with non-combustible materials and in such arrangement as to be easily accessible for convenient use. All public records should be kept in the buildings in which they are ordinarily used. Record books should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever any State, county, or municipal records are in need of repair, restoration, or rebinding, the head of such State agency, department, board, or commission, the board of county commissioners of such county, or the governing body of such municipality may authorize that the records in need of repair, restoration, or rebinding be removed from the building or office in which such records are ordinarily kept, for the length of time required to repair, restore, or rebind them. Any public official who causes a record book to be copied shall attest it and shall certify on oath that it is an accurate copy of the original book. The copy shall then have the force of the original. (1935, c. 265, s. 7; 1951, c. 294.)

Editor's Note.—The 1951 amendment inserted the fourth sentence.

§ 132-8. Assistance by and to State Department of Archives and History.—The State Department of Archives and History shall have the right to examine into the condition of public records and shall give advice and assistance to public officials in the solution of their problems of preserving, filing and making available the public records in their custody. When requested by the State Department of Archives and History, public officials shall assist the Department in the preparation of an inclusive inventory of records in their custody, to which shall be attached a schedule, approved by the head of the governmental unit or agency having custody of the records and the Director of the State Department of Archives and History, establishing a time period for the retention or disposal of each series of records. Upon the completion of the inventory and schedule, the State Department of Archives and History shall (subject to the availability of necessary space, staff, and other facilities for such purposes) make available space in its Records Center for the filing of semi-current records so scheduled and in its archives for non-current records of permanent value, and shall render such other assistance as needed, including the microfilming of records so scheduled. (1935, c. 265, s. 8; 1943, c. 237; 1959, c. 68, s. 2.)

Editor's Note.—The 1943 amendment substituted "State Department of Archives and History" for "North Carolina Historical

Commission."

The 1959 amendment added the second and third sentences.

§ 132-8.1. Records management program administered by Department of Archives and History; establishment of standards, procedures, etc.; surveys.—A records management program for the application of efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposal of official records shall be administered by the State Department of Archives and History. It shall be the duty of that Department, in cooperation with and with the approval of the Department of Administration, to establish standards, procedures, and techniques for effective management of public records, to make continuing surveys of paper work operations, and to recommend improvements in current records management practices including the use of space, equipment, and supplies employed in creating, maintaining, and servicing records. It shall be the duty of the head of each State agency and the governing body of each county, municipality and other subdivision of government to cooperate with the State Department of Archives and History in conducting surveys and to establish and maintain an active, continuing program for the economical and efficient man-

agement of the records of said agency, county, municipality, or other subdivision of government. (1961, c. 1041.)

§ 132-8.2. Selection and preservation of records considered essential; making or designation of preservation duplicates; force and effect of duplicates or copies thereof.—In cooperation with the head of each State agency and the governing body of each county, municipality, and other subdivision of government, the State Department of Archives and History shall establish and maintain a program for the selection and preservation of public records considered essential to the operation of government and to the protection of the rights and interests of persons, and, within the limitations of funds available for the purpose, shall make or cause to be made preservation duplicates or designate as preservation duplicates existing copies of such essential public records. Preservation duplicates shall be durable, accurate, complete and clear, and such duplicates made by a photographic, photostatic, microfilm, micro card, miniature photographic, or other process which accurately reproduces and forms a durable medium for so reproducing the original shall have the same force and effect for all purposes as the original record whether the original record is in existence or not. A transcript, exemplification, or certified copy of such preservation duplicate shall be deemed for all purposes to be a transcript, exemplification, or certified copy of the original record. Such preservation duplicates shall be preserved in the place and manner of safekeeping prescribed by the State Department of Archives and History. (1961, c. 1041.)

§ 132-9. Violation of chapter a misdemeanor.—Any public official who refuses or neglects to perform any duty required of him by this chapter shall be guilty of a misdemeanor and upon conviction fined not more than twenty dollars for each month of such refusal or neglect. (1935, c. 265, s. 9.)

Chapter 133.

Public Works.

Sec.

133-1. Employment of architects, etc., on public works when interested in use of materials prohibited.

133-1.1. Certain buildings involving public funds to be designed, etc., by architect or engineer.

Sec.

133-2. Drawing of plans by material furnisher prohibited.

133-3. Specifications to carry competitive items; substitution of materials.

133-4. Violation of chapter made misdemeanor.

§ 133-1. Employment of architects, etc., on public works when interested in use of materials prohibited.—It shall be unlawful for any person, firm or corporation to employ on any city, county or State work, supported wholly or in part with public funds, any architect, engineer, designer or draftsman, who is in any way connected with the sale or promotion of or in the manufacture of any material or items used in the construction of such works, or who is a stockholder, officer, partner, or owner of any manufacturing concern, or of any sales organization, engaged in the manufacture or sale of such material, or items, which may be used in the construction of such works. (1933, c. 66, s. 1.)

§ 133-1.1. Certain buildings involving public funds to be designed, etc., by architect or engineer.—(a) In the interest of public health, safety and economy, every officer, board, department or commission charged with the duty of approving plans and specifications or awarding or entering into contracts involving the expenditure of public funds in excess of twenty thousand dollars (\$20,000.00) for the construction or repair of public buildings, or State-owned and operated utilities, shall require that such plans and specifications be prepared by a registered architect, in accordance with the provisions of chapter 83 of the General Statutes, or by a registered engineer, in accordance with the provisions of chapter 89 of the General Statutes, or by both architect and engineer, particularly qualified by training and experience for the type of work involved, and that the North Carolina seal of such architect or engineer together with the name and address of such architect or engineer, or both, be placed on all such plans and specifications.

(b) On all projects requiring the services of an architect or engineer, or both, the architect or engineer or both whose names and seals appear on plans or specifications, shall inspect the construction, or repairs or installations, and based upon said inspection shall issue a signed and sealed certificate of compliance to the awarding authority that the contractor has fulfilled all obligations of such plans, specifications, and contract. No certificate of compliance shall be issued until the architect and/or engineer is satisfied that the contractor has fulfilled all obligations of such plans, specifications, and contract.

(c) The following shall be excepted from the requirements of subsection (a) of this section:

- (1) Dwellings and outbuildings in connection therewith, such as barns and private garages.
- (2) Apartment buildings used exclusively as the residence of not more than two families.
- (3) Buildings used for agricultural purposes other than schools or assembly halls which are not within the limits of a city or an incorporated village.
- (4) Temporary buildings or sheds used exclusively for construction purposes, not exceeding twenty feet in any direction, and not used for living quarters.

(d) On construction or repair projects involving the expenditures of public funds in an amount of twenty thousand dollars (\$20,000.00) or less, and on which no registered architect or engineer is employed, the governing board or awarding authority shall require a certificate of compliance with the State Building Code from

the city or county inspector for the specific trade or trades involved or from a registered architect or engineer.

(e) All plans and specifications for public buildings of any kind shall be identified by the name and address of the author thereof.

(f) Neither the designer nor the contractor involved shall receive his final payment until the required certificate of compliance shall have been received by the awarding authority. (1953, c. 1339; 1957, c. 994; 1963, c. 752.)

Editor's Note.—The 1957 amendment re- "or State-owned and operated utilities" near wrote this section. the middle of subsection (a).
The 1963 amendment inserted the words

§ 133-2. Drawing of plans by material furnisher prohibited.—It shall be unlawful for any architect, engineer, designer or draftsman, employed on county, State, or city works, to employ or allow any manufacturer, his representatives or agents, to write, plan, draw, or make specifications for such works or any part thereof. (1933, c. 66, s. 2.)

§ 133-3. Specifications to carry competitive items; substitution of materials.—All architects, engineers, designers, or draftsmen, when designing, or writing specifications for materials to be used in any city, county or State work, shall specify in their plans at least three items of equal design or their equivalent design, which would be acceptable upon such works. Where it is impossible to specify three items due to the fact that there are not that many items in competition, then as many items as are available shall be specified. Substitution of materials or equipment of equal or equivalent design shall be submitted to the architect or engineer for approval or disapproval before any such substitutions may be made. (1933, c. 66, s. 3; 1951, c. 1104, s. 5.)

Editor's Note.—The 1951 amendment added the last sentence.

§ 133-4. Violation of chapter made misdemeanor.—Any person, firm, or corporation violating the provisions of this chapter shall be guilty of a misdemeanor and upon conviction, license to practice his profession in this State shall be withdrawn for a period of one year and he shall be subject to a fine of not more than five hundred dollars. (1933, c. 66, s. 4.)

Chapter 134.

Reformatories.

Article 1.

Stonewall Jackson Manual Training and Industrial School.

Sec.

- 134-1. Incorporation; certain powers.
- 134-2. Purpose of the school.
- 134-3. Power to purchase land and locate school.
- 134-4. [Repealed.]
- 134-5. Application of funds; account required.
- 134-6. Trustees to employ superintendent and assistants, and make regulations.
- 134-7. Treasurer and superintendent to give bond.
- 134-8. Powers of superintendent.
- 134-9. Governor to visit reformatory.
- 134-10. Courts may commit offenders to reformatory.
- 134-11. Governor may transfer prisoners to reformatory.
- 134-12. Department first established; sexes separated.
- 134-13. Industrial training provided.
- 134-14. General instruction and training given.
- 134-15. Ungovernable inmates removed.
- 134-16. Trustees to receive gifts for cottages.
- 134-17. Boys from counties making gifts; designation of cottage.
- 134-18. Cottages erected by two or more counties.
- 134-19. [Repealed.]
- 134-20. Contributions from public funds; bond issues.
- 134-21. Cherokee Indians admitted.

Article 2.

State Home and Industrial School for Girls

- 134-22. Incorporation and name.
- 134-23. [Repealed.]
- 134-24. Power to purchase land and erect buildings.
- 134-25. Power of control.
- 134-26. Appointment of officers; compensation; bylaws.
- 134-27. Persons committed to the reformatory; time of detention.
- 134-28. Delivery of inmates to institution; expenses.
- 134-29. Voluntary application for admission; care of children.
- 134-30. Law as to juvenile delinquents applied.
- 134-31. Discharge on parole; arrest for escape or violation of parole.
- 134-32. Industrial training; compensation; power to punish.
- 134-33. Unlawful acts of inmates and others; escape; prostitution, etc.
- 134-34. "Inmate" and "prostitution" defined.

Sec.

- 134-35. Punishment for violation of § 134-33.

Article 3.

Industrial Farm Colony for Women—Dobb's Farms.

- 134-36. Name and establishment.
- 134-37. [Repealed.]
- 134-38. Located in healthful section.
- 134-39. Plans for buildings.
- 134-40. Authority of directors.
- 134-41. Power to appoint and remove.
- 134-42. Management of institution.
- 134-43. Women subject to committal.
- 134-44. Parole.
- 134-45. Effect of parole.
- 134-46. Escape of inmate.
- 134-47. Recommendation for discharge.
- 134-48. General and industrial training.

Article 4.

Reformatories or Homes for Fallen Women.

- 134-49. Counties and cities authorized to establish reformatories.
- 134-50. Power to purchase land, erect buildings, and maintain the institution.
- 134-51. Board of directors elected; officers; regulations.
- 134-52. Advisory board of women.
- 134-53. Special tax authorized.
- 134-54. Employment of superintendent and assistants; rules and regulations.
- 134-55. Power of superintendent.
- 134-56. Physician employed.
- 134-57. Purpose of home; persons to be admitted.
- 134-58. Right of directors to control inmates.
- 134-59. Power of courts to commit persons to reformatory.
- 134-60. Clerk of superior court may commit in certain cases.
- 134-61. Voluntary application for admission.
- 134-62. Instruction and training to be given.
- 134-63. Industrial training; assistance to discharged inmates.
- 134-64. Discharge on parole; rearrest for escape or violation of parole.
- 134-65. Ungovernable inmates removed.
- 134-66. Reports to be made by directors; inspection by grand jury.

Article 5.

Eastern Carolina Industrial Training School for Boys.

- 134-67. Corporation created; name; powers.
- 134-68. [Repealed.]
- 134-69. Establishment and operation of school; boys subject to committal; control; term of detention.
- 134-70. Selection of location; power and size of purchase.

Sec.

- 134-71. Receipts expended for school; accounting and reports.
- 134-72. Bonds of superintendent and treasurer.
- 134-73. Enforcement of discipline; discharge of superintendent.
- 134-74. Transfer by order of Governor.
- 134-75. Work to be conducted.
- 134-76. Boys to be received; subjects of instruction.
- 134-77. Management and control of school; rules and regulations.
- 134-78. Certificate for removal from school; order of removal.

Article 6.**Morrison Training School.**

- 134-79. Creation of corporation; name; powers.
- 134-80. [Repealed.]
- 134-81. Powers of board; board of parole.
- 134-82. Delinquents committed to institution; cost; age limit.
- 134-83. Selection of location of institution; title.
- 134-84. Apportionment of admissions; private or municipal contributions.

Article 6A.**State Training School for Negro Girls**

- 134-84.1. Creation and name.
- 134-84.2. Under control of North Carolina Board of Juvenile Correction.
- 134-84.3. Authority to secure real estate and erect buildings.
- 134-84.4. Operation of institution before permanent quarters established.
- 134-84.5. Powers and duties of board of directors.
- 134-84.6. Superintendent of institution.
- 134-84.7. Committal and delivery of girls to institution; no inmate detained after becoming of age.
- 134-84.8. Conditional release of inmates; final discharge.
- 134-84.9. Contract to care for certain girls within federal jurisdiction.

Article 7.**Conditional Release and Final Discharge of Inmates of Certain Training and Industrial Schools.**

- 134-85. Conditional release.
- 134-86. Final discharge.

Article 8.**Care of Persons under Federal Jurisdiction.**

Sec.

- 134-87. Certain correctional institutions to make contracts with federal agencies for care of persons under federal jurisdiction.
- 134-88. Term of contract.
- 134-89. Approval by North Carolina Budget Bureau; payments received under contracts.

Article 9.**State Board of Juvenile Correction.**

- 134-90. State Board of Juvenile Correction created.
- 134-91. Powers and duties of the State Board of Juvenile Correction.
- 134-92. Organization of the Board.
- 134-93. Meetings of the Board.
- 134-94. Executive committees.
- 134-95. Bylaws, rules and regulations.
- 134-96. Commissioner of Juvenile Correction.
- 134-97. Compensation for members of the Board.
- 134-98. Election of superintendents.
- 134-99. Bonds for superintendents and budget officers.
- 134-100. Who may be committed.
- 134-101. Removal request by Board.
- 134-102. Transfer by order of Governor.
- 134-103. Institution to be in position to care for offender before commitment.
- 134-104. Delivery to institution.
- 134-105. Return of boys and girls improperly committed.
- 134-106. Work to be conducted.
- 134-107. Conditional release; superintendent may grant conditional release; revocation of release.
- 134-108. Final discharge.
- 134-109. Return of runaways.
- 134-110. Aiding escapees; misdemeanor.
- 134-111. State Board of Health to supervise sanitary and health conditions.
- 134-112. Care of persons under federal jurisdiction.
- 134-113. Term of contract.
- 134-114. Approval by State Budget Bureau.

ARTICLE 1.***Stonewall Jackson Manual Training and Industrial School.***

§ 134-1. **Incorporation; certain powers.**—The Stonewall Jackson Manual Training and Industrial School is hereby created a corporation, and as such corporation it is authorized and empowered to accept and use donations and appropriations and to do all other things necessary and requisite to be done in furtherance of the purpose of its organization and existence as hereinafter set forth. (1907, c. 509, s. 1; 1907, c. 955; C. S., s. 7313; 1925, c. 306, s. 1; 1943, c. 776, s. 12.)

Editor's Note.—Prior to the 1943 amendment this section related to the board of trustees of the school as a body corporate.

This article is constitutional and committing a child to the institution is not imprisonment as for the punishment of crime, but is a paternal restraint exercised by the State for the protection of society and for the interest of the child. In re Watson, 157 N. C. 340, 72 S. E. 1049 (1911).

Detention Cannot Be for Punishment.—

The punishment for vagrancy cannot exceed thirty days under our statute, and a legislative act which provides for a longer detention of a child in a reformatory for that offense, if merely for the purpose of punishment, would be violative of § 14 of the Bill of Rights. In re Watson, 157 N. C. 340, 72 S. E. 1049 (1911).

§ 134-2. Purpose of the school.—The trustees are empowered to establish and operate a school for the training and moral and industrial development of the criminally delinquent children of the State; and when such school has been organized the trustees may, in their discretion, receive therein such delinquent and criminal children under the age of sixteen years as may be sent or committed thereto under any order or commitment by the judges of the superior courts, the judges of the juvenile courts, or the recorders or other presiding officers of the city or criminal courts, and shall have the sole right and authority to keep, restrain, and control them during their minority, or until such time as they shall deem proper for their discharge, under such proper and humane rules and regulations as may be adopted by the trustees. (1907, c. 509, s. 2; 1907, c. 955, s. 1; C. S., s. 7314.)

Benefit of Child Detained.—The act creating the Stonewall Jackson Training School in its general scheme and purpose is

for the benefit of a child detained therein. In re Watson, 157 N. C. 340, 72 S. E. 1049 (1911).

§ 134-3. Power to purchase land and locate school.—The board of trustees shall select a suitable place outside of and away from any city, town, or village, for the location of such school, and they are empowered to purchase, at some suitable and convenient place in this State, not less than one hundred acres nor more than five hundred acres of land whereon to erect and operate such school. (1907, c. 509, ss. 2, 15; C. S., s. 7315.)

§ 134-4: Repealed by Session Laws 1943, c. 776, s. 12.

§ 134-5. Application of funds; account required.—All moneys received by the trustees by private gifts, donations, or otherwise shall be expended in the establishment, operation, and maintenance of the school for the training and the moral and industrial development of such delinquent children, and in securing homes for them; and in case the trustees receive or are allowed any State aid for said school, it shall be their duty to duly account for all moneys so received by them and to make report of the manner of its expenditure and of the work done by them as hereinafter more particularly provided for. (1907, c. 509, s. 3; C. S., s. 7317.)

§ 134-6. Trustees to employ superintendent and assistants, and make regulations.—The board of trustees shall have the management and control of the school, and shall have authority to employ a superintendent and such other assistants as they may deem necessary; to fix their salaries, to define their duties, to discharge any employees, and to make any and all rules and regulations as they may deem necessary for the management and conducting of such reformatory under the provisions of this article, and not inconsistent therewith. (1907, c. 509, s. 8; C. S., s. 7318.)

§ 134-7. Treasurer and superintendent to give bond.—The treasurer and superintendent shall, before receiving any of said funds, make a good and sufficient bond, payable to the State of North Carolina, in such sums as may be named by the Governor and approved by the State Treasurer. (1907, c. 509, s. 7; C. S., s. 7319.)

§ 134-8. Powers of superintendent.—The superintendent employed by the

board is authorized to require obedience from all the inmates of the school, and is intrusted with the authority for correcting and punishing any inmate thereof to the same extent as a parent may under the law impose upon his own child, and the trustees shall have the right at any time to discharge the superintendent for cause. (1907, c. 509, s. 9; C. S., s. 7320.)

Cited in *In re Watson*, 157 N. C. 340, 72 S. E. 1049 (1911).

§ 134-9. Governor to visit reformatory.—It shall be the duty of the Governor of the State to visit the reformatory at least once in each year, and oftener if he deem it necessary, and to make such suggestions to the board of trustees as he may deem wise and for the best interests of the school or reformatory. (1907, c. 509, s. 10; C. S., s. 7321.)

§ 134-10. Courts may commit offenders to reformatory.—The judges of the superior courts, recorders, or other presiding officers of the city or criminal courts of this State, shall have authority, and it shall be their duty, to sentence to the school all persons under the age of sixteen years convicted in any court of this State of any violation of the criminal laws: Provided, that such judge or other of said officers shall be of the opinion that it would be best for such person, and the community in which he may be convicted, that he should be so sentenced. Any commitment under this article, whether by judge or court, as hereinbefore provided, shall be full, sufficient, and competent authority to the officers and agents of the school for the detention and keeping therein of the child so committed. (1907, c. 509, ss. 11, 17; 1907, c. 955, s. 1; C. S., s. 7322.)

Meaning of "Convicted" and "Sentenced."
—The provisions in the act creating the Stonewall Jackson Training School that the child committed thereto must be "convicted" and "sentenced" by the court, construing the act as a whole, does not mean that detention therein is an imprisonment as a punishment for a crime, but that the "conviction" is merely evidence that the child needs the care and nurture of the State, and that the sentence is an order of detention. *In re Watson*, 157 N. C. 340, 72 S. E. 1049 (1911).

Power to Commit Permissive.—It would seem that the legislature did not intend that a fifteen-year-old boy, convicted of a capital crime, should be sentenced to a reformatory, but if the statute be construed to permit such sentence, the power of the court to impose such sentence is made permissive and not compulsory, and sentence of death upon a conviction of a fifteen-year-old boy of the crime of rape is without error. *State v. Smith*, 213 N. C. 299, 195 S. E. 819 (1938).

§ 134-11. Governor may transfer prisoners to reformatory.—The Governor of the State may by order transfer any person under the age of sixteen years from any jail, chain gang, or penitentiary in this State to such reformatory. (1907, c. 509, s. 12; C. S., s. 7323.)

§ 134-12. Department first established; sexes separated.—The board of trustees shall first establish and maintain such departments of the manual training school as shall be adapted to the use of such class of boys as in the discretion of the board may be most in need of such care and training and will probably be most benefited thereby. When both sexes are admitted, the males and females shall be kept in separate apartments or buildings. (1907, c. 509, ss. 17, 18; C. S., s. 7324.)

§ 134-13. Industrial training provided.—There shall be established and conducted on such lands as may be owned in connection with the school such agriculture, horticulture, workshops, and other pursuits as the board of trustees may deem expedient so as to keep regularly at work all able-bodied inmates. (1907, c. 509, s. 4; C. S., s. 7325.)

§ 134-14. General instruction and training given.—The officers of the school shall receive and take into it all children committed thereto by competent authority, or received therein as aforesaid, and shall cause all such children in the school to

be instructed in such rudimentary branches of useful knowledge as may be suited to their various ages and capacities. The children shall be taught such useful trades and given such manual training as the board may direct, and shall perform such manual labor as the principal or other superintending officers, subject to the direction of the board, may order. All the inmates shall, if possible, be taught the precepts of the Holy Bible, good moral conduct, how to work and to be industrious. (1907, c. 509, ss. 5, 14; C. S., s. 7326.)

§ 134-15. Ungovernable inmates removed.—If it shall appear to the board of trustees that any inmate of the school is or becomes ungovernable and is exerting an unwholesome influence over any other inmate, it shall be their duty to certify the same to the Governor of the State, and he may order such inmate to the State's prison or to the jail or chain gang in the county in which such inmate was convicted, where such person shall serve out his unexpired term. (1907, c. 509, s. 13; C. S., s. 7327.)

§ 134-16. Trustees to receive gifts for cottages.—The board of trustees of the Stonewall Jackson Training School are hereby empowered to receive specific gifts from individuals or other sources for the exclusive purpose of erecting and equipping cottages on the grounds of the institution under such rules and regulations as may be fixed by the said board of trustees. (Ex. Sess. 1920, c. 48, s. 1; C. S., s. 7328(a).)

§ 134-17. Boys from counties making gifts; designation of cottage.—When such gifts, sufficient to erect or to erect and equip a cottage sufficient to accommodate thirty boys, are received from individuals or other sources from any given county of the State, the trustees of the Stonewall Jackson Training School may enter into an obligation to receive and maintain in the institution only according to their fixed rules and regulations for entrance, maintenance and discharge, a number of boys from the said county equal to the number which may be accommodated in such building. Such cottage may be designated county cottage. (Ex. Sess. 1920, c. 48, s. 2; C. S., s. 7328(b).)

§ 134-18. Cottages erected by two or more counties.—Should two or more counties desire to combine for the purpose of erecting such buildings, the same may be done under like conditions as stated in § 134-17, and such cottage may be known by the names of the counties so combining. (Ex. Sess. 1920, c. 48, s. 3; C. S., s. 7328(c).)

§ 134-19: Repealed by Session Laws 1943, c. 543.

§ 134-20. Contributions from public funds; bond issues.—It shall be lawful for county commissioners or the governing bodies of cities and towns to contribute from the public funds such amounts as they may deem proper for the purpose stated in §§ 134-17 and 134-18, and such funds may be lawfully devoted from any public funds of said bodies or secured by bond issue under such rules of issue as may be ordained by said boards of county commissioners or governing bodies of towns and cities. (Ex. Sess. 1920, c. 48, s. 4; C. S., s. 7328(e).)

§ 134-21. Cherokee Indians admitted.—The governing authorities of the Stonewall Jackson Training School at Concord and the State Home and Industrial School for Girls at Samarcand are hereby authorized and directed to make proper provisions for admitting delinquent boys and girls respectively of the Cherokee Indian Race of Robeson County to these institutions under the same rules and regulations as are now provided for admitting delinquent boys and girls of the white race: Provided, however, that the boys and girls so admitted shall be separated from the white inmates of the said institutions. (1933, c. 490, s. 1.)

ARTICLE 2.

State Home and Industrial School for Girls.

§ 134-22. **Incorporation and name.**—A corporation to be known and designated as the State Home and Industrial School for Girls is hereby created, and as such corporation it is authorized and empowered to accept and use donations and appropriations and to do all other things necessary and requisite to be done in furtherance of the purpose of its organization and existence as hereinafter set forth. (1917, c. 255, s. 1; C. S., s. 7329; 1937, c. 147, s. 1.)

Editor's Note.—Prior to the 1937 amendment the name of the institution was "State Home and Industrial School for Girls and Women."

§ 134-23: Repealed by Session Laws 1943, c. 776, s. 13.

§ 134-24. **Power to purchase land and erect buildings.**—The board of managers is authorized to secure by gift or purchase suitable real estate within the State, not less than fifty acres, at such place as the board may deem best, and with the money or other property which the corporation may have received for that purpose, either by donations from individuals or by appropriation from the State, the board shall proceed to erect on such real estate buildings suitable for carrying out the purposes for which the corporation is created. (1917, c. 255, s. 3; C. S., s. 7331.)

§ 134-25. **Power of control.**—The board of managers shall have the general superintendence, management, and control of the institution; of the grounds and buildings, officers, and employees thereof; of the inmates therein and all matters relating to the government, discipline, contracts, and fiscal concerns thereof; and may make such rules and regulations as may seem to them necessary for carrying out the purposes of the institution. And the board shall have the right to keep, restrain, and control the inmates of the institution until such time as the board may deem proper for their discharge under such proper and humane rules and regulations as the board may adopt. The board shall endeavor as far as possible to classify the inmates and keep the different classes in separate wards or divisions, so as to produce the best results in the reformatory work. The board of managers shall constitute a board of parole of the institution and shall have power to parole and discharge the inmates under such rules and regulations as the board may prescribe. (1917, c. 255, s. 4; C. S., s. 7332.)

§ 134-26. **Appointment of officers; compensation; bylaws.**—The board of managers shall appoint from among its members a president, a secretary, and a treasurer, who shall hold office for one year from the date of appointment; and if the board deem it proper to do so, the office of secretary and treasurer may be combined in one. The board shall also appoint a superintendent, who shall be a woman of experience and training. The board shall fix the compensation of the superintendent and all officers and employees of the institution, and shall prescribe the duties of each. The board shall further adopt such bylaws as, in the judgment of the board, may be necessary, fixing the time and place of the meetings of the board and making such other provisions as may be necessary for the proper management of the institution. (1917, c. 255, s. 5; C. S., s. 7333.)

§ 134-27. **Persons committed to the reformatory; time of detention.**—Any girl who may come or be brought before any court of the State, and may either have confessed herself guilty or have been convicted of being a habitual drunkard, or being a prostitute, or of frequenting disorderly houses or houses of prostitution, or of vagrancy, or of any other misdemeanor, may be committed by such court for confinement in the institution aforesaid: Provided, such person is not insane or mentally or physically incapable of being substantially benefited by the discipline of such institution; and provided further, that before sentencing such person to

confinement in the institution the court shall ascertain whether the institution is in position to care for such person; and it shall be at all times within the discretion of the board of directors as to whether the board will receive any person in the institution. No commitment shall be for any definite term, but any person so committed may be paroled or discharged at any time after her commitment by the board of managers, but no inmate shall in any case be detained longer than three years: Provided, that when any girl under twenty-one years of age shall have been committed to the institution the trustees shall have the sole right and authority to keep, restrain and control her until she is twenty-one years old, or until such time as they shall deem proper for her discharge, under such proper and humane rules and regulations as may be adopted by the trustees. When any such person shall come before any court for the purpose of confessing guilt or for trial, the court shall, as far as feasible and as far as consistent with public policy, give a private hearing, and in all respects avoid unnecessary publicity in connection with the proceedings before the court. (1917, c. 255, ss. 6, 12; C. S., s. 7334; Ex. Sess. 1921, c. 69; 1937, c. 147, s. 2.)

Cross Reference.—As to admission of Cherokee Indians, see § 134-21. was inserted by the 1921 amendment.

Editor's Note.—The provision allowing the restraining of girls under twenty-one words "or woman" formerly appearing as the third and fourth words of this section. The 1937 amendment struck out the

§ 134-28. Delivery of inmates to institution; expenses.—It shall be the duty of the county authorities of the county from which any girl or woman is sent to the home, or the city authorities, if any girl or woman is ordered to be sent to the home by any city court, to see that such girl or woman is safely and duly delivered to the home, and to pay all the expenses incident to her conveyance and delivery to the home. (1919, c. 122; C. S., s. 7335.)

§ 134-29. Voluntary application for admission; care of children.—In addition to caring for such persons as may be committed to the institution by order of court, the board of managers may, in their discretion, receive into the institution any such person who may have in writing confessed herself guilty of any offense or any wayward conduct and may in writing express her desire to become an inmate of the institution; but the board shall not admit any such person unless upon examination of such person, freely and voluntarily held under the direction of the board, the board shall conclude that confinement in the institution will probably aid in the reformation of such person. Any person becoming an inmate of the institution under the provisions of this section shall be subject to the same rules and regulations as those who have been committed by order of court, and shall be detained for such time as the board, in its judgment, may deem best, not exceeding, however, the term of three years. And it shall further be the duty of the board of managers to make suitable provision for the care and maintenance of children born in the institution, and also of the infant children that any woman may have when she is committed to the institution. (1927, c. 255, s. 7; C. S., s. 7336.)

§ 134-30. Law as to juvenile delinquents applied.—The provisions of the chapter pertaining to the reclamation and training of juvenile delinquents shall apply to young girls, and any court before whom a young girl is brought pursuant to the provisions of said chapter may be by order of court placed in the institution herein established, and shall be subject to all the provisions of law relating thereto: Provided, however, that no girl shall be admitted to the institution under this provision without the previous consent of the board of managers. (1917, c. 255, s. 8; C. S., s. 7337.)

§ 134-31. Discharge on parole; arrest for escape or violation of parole.—The board of managers may conditionally discharge any person at any time, and if any such person shall violate any condition of her parole or shall violate any condition upon which she has been discharged, or if any inmate escape from the institu-

tion, the board of managers may cause any such person to be rearrested and returned to the institution and be detained therein for the unexpired portion of her term, dating from the time of her parole, conditional discharge, or escape. The board of managers is empowered to issue to any person designated by the board a commitment signed by the president and attested by the secretary, and having attached thereto the common seal of the corporation, by the terms of which commitment such person may be authorized and empowered to apprehend any such person who may have violated her parole or any condition of her discharge or that may have escaped, and carry such person back to the institution. Such commitment shall briefly state the reason for the issuance of the same, and the person designated to execute the same may execute it in any county in the State. (1917, c. 255, s. 9; C. S., s. 7338.)

§ 134-32. Industrial training; compensation; power to punish.—The board of managers is authorized and empowered to establish and maintain within the institution an industrial school, and shall provide for the safekeeping and employment of the inmates for the purpose of teaching each of them a useful trade or profession and improving her mental and moral condition. If the board of managers sees fit, they may pay each inmate reasonable compensation for labor performed, after deducting such sum as they may deem reasonable for necessary expenses of her maintenance and discipline. To secure the safekeeping, obedience, and good order of the inmates, the superintendent shall have the same power as to such inmates as keepers of jails and other penal institutions possess as to persons committed to their custody. (1917, c. 255, s. 10; C. S., s. 7339.)

§ 134-33. Unlawful acts of inmates and others; escape; prostitution, etc.—It shall be unlawful:

- (1) For any inmate of the State Home and Industrial School for Girls and Women to escape from said school, or for any person to aid and abet any inmate to escape therefrom;
- (2) For any person to advise, or solicit, or to offer to advise or solicit, any inmate of said school to escape therefrom;
- (3) For any person to transport, or to offer to transport, in automobile or other vehicle or conveyance, any inmate of said school to or from any place: Provided, this shall not apply to the superintendent and teachers of said school, or to employees acting under the superintendent and teachers thereof;
- (4) For any person to engage in, or to offer to engage in prostitution with any inmate of said school;
- (5) For any person to receive, or to offer to receive any inmate of said school into any place, structure, building or conveyance for the purpose of prostitution, or to solicit any inmate of said school to engage in prostitution;
- (6) For any person to conceal an escaped inmate of said school, or to furnish clothing to an escaped inmate thereof to enable her to conceal her identity. (Ex. Sess. 1920, c. 40, s. 1; C. S., s. 7343(a).)

Editor's Note.—In view of the 1937 amendment to § 134-22 it seems that the failure to strike out the words "and Women" in subdivision (1) was an inadvertence on the part of the legislature.

§ 134-34. "Inmate" and "prostitution" defined.—The term "inmate" as used in § 134-33 shall be construed to include any and all girls committed to, or received into said State Home and Industrial School for Girls under the provisions of this article; and the term "prostitution" shall be construed to include the offering or receiving of the body for sexual intercourse. (Ex. Sess. 1920, c. 40, s. 2; C. S., s. 7343(b).)

§ 134-35. Punishment for violation of § 134-33.—Any person who shall knowingly and willfully violate any one of the provisions of § 134-33 shall be guilty of a

misdeemeanor, and shall be fined or imprisoned, or both fined and imprisoned, in the discretion of the court. (Ex. Sess. 1920, c. 40, s. 3; C. S., s. 7343(c).)

ARTICLE 3.

Industrial Farm Colony for Women—Dobb's Farms.

§ 134-36. **Name and establishment.**—A State institution for women to be known as Dobb's Farms, is hereby established. (1927, c. 219, s. 1; 1945, c. 847.)

Cross Reference.—As to authority to transfer entire population at Dobb's Farms to the State Home and Industrial School for Girls, see § 134-91.

Editor's Note.—The 1945 amendment changed the name of the Industrial Farm Colony for Women to Dobb's Farms.

§ 134-37: Repealed by Session Laws 1943, c. 776, s. 14.

§ 134-38. **Located in healthful section.**—The board of directors is authorized to use for the purpose of said institution, any site already owned by the State, when approved by the Governor and Council of State. Such land shall be located in a healthful section of the State and shall have natural drainage and adequate natural water supply. It shall also include woodland and arable land to the end that, as far as practicable, the food for the inmates may be produced on such land. The farm must also be accessible by rail or road to all sections of the State. (1927, c. 219, s. 3.)

§ 134-39. **Plans for buildings.**—The directors shall cause to be prepared plans and specifications for remodeling or erecting on such site necessary buildings for a suitable plant for the institution. The directors shall furnish and equip the same ready for use. Contracts shall be made by the directors and those calling for an expenditure of over five hundred dollars shall be duly advertised and competitive bids received thereon, but whenever possible convict labor shall be used, the compensation for such to be agreed upon by the directors and State Highway Commission. When such buildings have been prepared and equipped, and the necessary staff of officers has been organized, the directors shall make announcement that the institution is ready for the reception of inmates. (1927, c. 219, s. 4.)

Editor's Note.—By virtue of G. S. 136-1.1, substituted for "State Highway and Public "State Highway Commission" has been sub- Works Commission."

§ 134-40. **Authority of directors.**—The directors shall have control of the institution; determine the policy of the same and make necessary rules for the discipline, instruction, mental and physical examination and treatment of the inmates and for the labor of the inmates; cause to be kept proper records, including those of inmates; hold regular meetings, at least quarterly, at said institution and audit the accounts of the superintendent quarterly. They shall report biennially to the Governor the general and financial condition of said institution, with such recommendations as they desire to make. (1927, c. 219, s. 5.)

§ 134-41. **Power to appoint and remove.**—The directors shall appoint and remove at their discretion, a superintendent of said institution who shall be a woman of liberal education and special training and who has had experience in institutional management or social work, not of their number, and who, before entering upon the duties of her office, shall be sworn to a faithful performance of her duties. The superintendent shall receive such compensation as shall be fixed by the directors and shall reside at said institution. (1927, c. 219, s. 6.)

§ 134-42. **Management of institution.**—The superintendent shall manage such institution and have control over the inmates thereof, and shall make rules and regulations for the administration of said institution, subject to the approval of the board of directors. The superintendent shall, also, subject to the approval of the board of directors, determine the number, select, appoint and assign duties of all

subordinate officers of said institution, who shall be women, as far as practicable, and shall be sworn to a faithful performance of their duties. As soon as the size of the institution demands it, a resident woman physician shall be employed. The superintendent may remove any officer appointed by her. (1927, c. 219, s. 7.)

§ 134-43. Women subject to committal.—Women sixteen years of age and older belonging to the following classes and who are not eligible for admission to Samarcand may be committed by any court of competent jurisdiction to said institution, and not otherwise; persons convicted of, or who plead guilty to the commission of misdemeanors, including prostitution, habitual drunkenness, drug-using, disorderly conduct. The board of directors may in its discretion receive and detain as an inmate of the institution any woman or girl, not otherwise provided for, who may be sentenced by any court of the United States within this State: Provided, that no woman who has been adjudged epileptic or insane by a competent authority, or is of such low mentality or is so markedly psychopathic as to prevent her from profiting by the training program of the institution, shall be admitted. Immediately upon commitment, a careful physical and mental examination by a competent physician and a psychologist shall be made of each person committed. The court imposing sentence upon offenders of either class shall not fix the term of such commitment except as hereinafter provided. Commitment to said institution shall be made within one week after sentence is imposed, by the sheriff when sentenced by the superior court, and by a police officer when sentence is imposed by any city, town or inferior court, but no offender shall be committed to such institution without being accompanied by a woman in addition to the officer. The expenses of such commitment shall be paid the same as commitments to other penal institutions in the State. The trial court shall cause a record of the case to be set with the commitment papers on blanks furnished by the institution. The duration of such commitment, including the time spent on parole, shall not exceed three years, except where the maximum term specified by law for the crime for which the offender was sentenced shall exceed that period, in which event such maximum term shall be the limit of detention under the provisions of this article, and in such cases it shall be the duty of the trial court to specify the maximum term for which the offender may be held under such commitment. (1927, c. 219, s. 8; 1937, c. 277.)

Editor's Note.—The 1937 amendment added the proviso to the second sentence.

§ 134-44. Parole.—Any inmate of the institution may, upon recommendation of the board of directors to the Governor, be allowed to go on parole under the following conditions: That she is in good physical condition, has ability to earn an honest living, has a satisfactory institutional record, based on the merit system, and a proper home to which she may go, or that suitable employment has been secured in advance. Each person paroled or discharged from said institution shall be given, if the superintendent deems it best, suitable clothing, transportation expenses and a sum of money not exceeding thirty dollars. Authority is conferred on said board of directors to establish such rules and regulations as it may deem necessary, setting forth the conditions upon which inmates may be discharged or recommended for parole, and to enforce such rules and regulations. (1927, c. 219, s. 9.)

§ 134-45. Effect of parole.—While upon parole, each inmate of said institution shall remain in the legal custody and under the control of the board of directors, and subject at any time to be taken to said institution for any reason that shall seem sufficient to said board. Whenever any paroled inmate of said institution shall violate her parole and be returned to the institution, she may be required to serve the unexpired term of her maximum sentence, including the time she was out on parole or any part thereof, in the discretion of the board of directors, or she may be paroled again if said board of directors shall so recommend. The request of said

board of directors or of any person authorized by the rules of said board, shall be sufficient warrant to authorize any officer of said institution or any officer authorized by law to serve criminal process within the State, to return any inmate on parole into actual custody; and it shall be the duty of police officers, constables and sheriffs to arrest and hold any paroled inmate when so requested, without any written warrant, and for the performance of such duty, the officer performing the same, except officers of said institution, shall be paid by the board of directors of said institution out of the institution funds such reasonable compensation as is provided by law for similar services in other cases. (1927, c. 219, s. 10.)

§ 134-46. **Escape of inmate.**—If any inmate shall escape from said institution or from any keeper or officer having her in charge or from her place of work while engaged in working outside the walls of said institution, she shall be returned to said institution when arrested, and may be disciplined in such manner as the board of directors may determine. Any person who shall advise, induce, aid or abet any woman committed to the State Industrial Farm or to the charge or guardianship of the directors of said institution to escape from said farm, or from the custody of any person to whom such women shall have been entrusted by said directors or by their authority, shall be fined not more than five hundred dollars or imprisoned not more than one year, and any woman who shall have so escaped may, whether the limit of her original sentence shall have expired or not, be arrested and detained without warrant, by any officer authorized to serve criminal process, for a reasonable time to enable the superintendent or a director of said farm, or a person authorized in writing by the superintendent of said farm or said directors and provided with the mittimus by which such woman was committed, or with a certified copy thereof, to take such woman for the purpose of returning her to said institution, and the officer arresting her shall be paid by the State a reasonable compensation for her arrest and keeping. Any woman lawfully committed to said institution who shall escape therefrom may be imprisoned in said institution for not more than one year from the expiration of the term for which she was originally committed. Prosecutions under this article may be instituted in any county in which such woman may be arrested. (1927, c. 219, s. 11.)

§ 134-47. **Recommendation for discharge.**—If it shall appear to said board of directors, that any inmate, on parole, although not having completed her maximum term, has maintained a satisfactory parole record, and will continue to lead an orderly life if discharged, said board may recommend to the Governor that such inmate be discharged from said institution. (1927, c. 219, s. 12.)

§ 134-48. **General and industrial training.**—The board of directors, in making rules and regulations for the government of said institution, shall make provision for a system of general and industrial training, including useful trades and home economics, and for proper recreation facilities. (1927, c. 219, s. 13.)

ARTICLE 4.

Reformatories or Homes for Fallen Women.

§ 134-49. **Counties and cities authorized to establish reformatories.**—In all cities that have a population of over twenty thousand people the governing body of such city and the board of county commissioners of the county in which the city is situated are authorized and empowered to establish jointly a reformatory or home for fallen women. (1917, c. 264, s. 1; C. S., s. 7344.)

§ 134-50. **Power to purchase land, erect buildings, and maintain the institution.**—The said city and county are authorized jointly to purchase a tract of land, not exceeding one hundred acres, for the use of such reformatory or home, the title to which shall be vested jointly in the city and county, and the reformatory shall be managed jointly by such city and county. The city and county are authorized

to build such buildings and improvements on the land so purchased, to keep and maintain such reformatory or home for fallen women, and to make all necessary appropriations for buildings and keeping and caring for the inmates thereof: Provided, however, the cost of said buildings shall not exceed the sum of forty thousand dollars, and the maintenance and upkeep and operating expenses per annum shall not exceed the sum of twenty thousand dollars. (1917, c. 264, s. 1; 1919, c. 33; C. S., s. 7345; 1925, c. 176.)

§ 134-51. Board of directors elected; officers; regulations.—The governing body of the city, at its annual election of officers for the city in May, shall elect for the term of two years two men as directors for such institution, and the board of county commissioners shall, in the same year, at their meeting in May, elect two men as directors for such institution to serve for two years. The mayor of the city and the chairman of the board of county commissioners shall be ex officio members of such board with equal right to vote, and the six directors shall have entire management and control of such reformatory for fallen women. The board shall elect one of their number president, and also elect a secretary and treasurer, and they shall have and exercise the usual powers incident to such officers. They shall make such rules and regulations as they see fit for the government and management of such institution. The directors shall take an oath to perform their service faithfully, and they shall continue as directors until their successors are duly elected and qualified. (1917, c. 264, s. 1; C. S., s. 7346.)

Local Modification.—Mecklenburg: 1931, c. 253.

§ 134-52. Advisory board of women.—The directors are authorized to appoint as an advisory board not more than twenty-five nor less than twelve discreet women to supervise and attend to the actual running of such institution. The advisory board of women shall be appointed for such term, not exceeding four years, as the directors may in their discretion think best. (1917, c. 264, s. 1; C. S., s. 7347.)

§ 134-53. Special tax authorized.—To assist in carrying out the provisions of this article the county commissioners and governing body of the city shall each levy annually a tax not exceeding two cents on each one hundred dollars valuation of real and personal property in such city and county respectively. The tax shall be levied and collected in the same manner as the other county and city taxes are collected. This fund shall be used exclusively for the purposes contemplated and set forth in this article, and shall be kept separate from all other funds. (1927, c. 264, s. 2; C. S., s. 7348.)

§ 134-54. Employment of superintendent and assistants; rules and regulations.—The board of directors shall have the management and control of the institution and shall have authority to employ superintendents and such other assistants as they may deem necessary; to fix their salaries, to define their duties, and to discharge any employee; and to make any and all rules and regulations as they may deem necessary for the management and conducting of the institution under the provisions of this article and not inconsistent therewith. (1917, c. 264, s. 5; C. S., s. 7349.)

§ 134-55. Power of superintendent.—The superintendent of the institution employed by the board of directors shall have the right to require obedience from all the inmates of the institution, and to use such lawful measures as may be necessary to enforce the same to the same extent as the superintendent of any other penal institution in this State is empowered in like case. (1917, c. 264, s. 6; C. S., s. 7350.)

§ 134-56. Physician employed.—For the purpose of treating the inmates of the institution for the whiskey, drug, or other habit or disease, the directors shall

employ a competent physician or physicians to attend and treat said inmates. (1917, c. 264, s. 14; C. S., s. 7351.)

§ 134-57. Purpose of home; persons to be admitted.—The reformatory or home shall be conducted for the correction of fallen women, and for the moral and industrial training of criminally delinquent women and girls, by teaching them useful trades and domestic science, etc.; and the directors may, in their discretion, receive into the institution such women or girls as shall be committed thereto by the judge or other presiding officer of any superior or recorder's court held anywhere in the State of North Carolina within that judicial district in which county the reformatory is now or may hereafter be situated, as hereinafter provided: Provided, that the reasonable cost of maintaining any woman or girl committed to such institution from any county other than that in which such reformatory shall be located shall be borne by the county from which such person shall have been committed. (1917, c. 264, s. 3; C. S., s. 7352.)

§ 134-58. Right of directors to control inmates.—The board of directors shall have the sole right to keep, restrain, and control the persons committed or otherwise received into the institution as hereinafter provided, during the term of their commitment thereto, under such proper and humane rules and regulations as may be adopted by the directors. (1917, c. 264, s. 4; C. S., s. 7353.)

§ 134-59. Power of courts to commit persons to reformatory.—When the institution is ready to receive and care for inmates, the board of directors shall notify the clerks of the courts hereinbefore specified; and the judges or other presiding officers of the superior, recorders, county, or other courts having like criminal jurisdiction, in that judicial district in which the reformatory is now or may hereafter be situated and established, shall have authority to sentence to the reformatory for fallen women for a term of not less than thirty days nor more than one year all those women who are convicted in their several courts of drunkenness or the drug habit, where it appears that they are habitual drunkards or drug fiends; and the judges or other presiding officers of such courts shall have authority to sentence to the "Reformatory for Women" for a term of not less than thirty days nor more than three years all female persons convicted in the said courts of any violation of the criminal laws of this State prohibiting and punishing fornication and adultery, keeping a house of ill-fame, or a bawdy-house, or disorderly house, or violating the criminal laws of this State as to chastity or vagrancy: Provided, that such judge or other presiding officer as aforesaid shall be of the opinion that it would be best for such persons and the community in which such persons may be convicted hereunder. The order of commitment of such judge or other presiding officer as hereinbefore provided shall be full, sufficient, and competent authority to the officers and agents of the institution for the detention and keeping therein of the persons so committed: Provided, that nothing herein shall authorize a justice of the peace to impose a sentence of longer than thirty days: Provided further, that judges and recorders holding courts in counties other than that in which the reformatory is located shall have power to commit such persons to the institution on the conditions heretofore set forth in this article. (1917, c. 264, s. 7; 1919, c. 302; C. S., s. 7354.)

§ 134-60. Clerk of superior court may commit in certain cases.—The clerk of the superior court shall have power and authority to commit to the institution for treatment any female person found by such clerk to be a habitual drunkard or habitually addicted to the drug habit, as such clerk is now authorized by law to commit to the hospital for the insane or to a private hospital, persons adjudged to be of unsound mind, and to that end such clerk of the court shall have all the power and authority conferred upon him by law with reference to insane persons. (1917, c. 264, s. 15; C. S., s. 7355.)

§ 134-61. Voluntary application for admission.—Any person fulfilling the requirements as to sex and age as hereinbefore provided may, upon written application to the directors, setting forth that the applicant wishes to reform and the term for which such applicant wishes to be detained, be admitted to such institution, in the discretion of the board of directors; and any inmate so admitted shall be subject to the same restraint, control, and treatment as persons committed thereto, and such applications signed by the applicants shall be full and sufficient authority for the detention and control of the applicants in the institution for and during the full term as set out in the application: Provided, that the directors may, in their discretion, discharge any inmate so admitted at any time. (1917, c. 264, s. 8; C. S., s. 7356.)

§ 134-62. Instruction and training to be given.—The officers of the institution shall take into the reformatory or home all persons committed thereto by competent authority, and shall cause all such persons to be instructed in such rudimentary branches of useful knowledge as may be suited to their various ages and capacities, and to be taught such useful trades and occupations as the board may direct; and such persons shall perform such labor as the principal and other superintending officers may order, subject to the discretion of the board of directors. All inmates of the institution shall, if possible, be taught the precepts of the Holy Bible, good moral conduct, how to work and be industrious. (1917, c. 264, s. 11; C. S., s. 7357.)

§ 134-63. Industrial training; assistance to discharged inmates.—There shall be established and conducted on such lands as may be owned in connection with the institution such useful pursuits as the board of directors may deem expedient, so as to keep regularly at work all able-bodied inmates thereof, and as far as may be practicable the board of directors shall assist the inmates, when paroled or discharged, in procuring suitable homes and honorable and respectable employment. (1917, c. 264, s. 12; C. S., s. 7358.)

§ 134-64. Discharge on parole; rearrest for escape or violation of parole.—The board of directors of the institution may detain therein, under the rules and regulations adopted by them, any person legally committed thereto, according to the terms of sentence and commitment; and with the approval and concurrence of the Governor of the State first had and obtained, may conditionally parole or discharge such person at any time prior to the expiration of the term of commitment. If, however, any inmate shall escape or be conditionally paroled, or be conditionally discharged from the institution as aforesaid, and violate and break the condition of her parole or conditional discharge, the board of directors may, by and through their superintendent, cause her to be arrested and returned to the institution, to be detained therein for the unexpired portion of the commitment, dating from the time of escape or parole or conditional discharge. The superintendent of the institution, or any employee thereof under his control and direction, may rearrest, without a warrant, any inmate of the institution who may have escaped therefrom, in any county of this State, and shall forthwith convey her back to the institution from which she escaped; and a justice of the peace or any judicial officer may cause an escaped inmate from the institution to be rearrested and held in custody until she can be returned to the institution as in case of the first commitment thereto. Any person conditionally paroled or conditionally discharged from the institution may be also rearrested and returned thereto upon a warrant issued by the chairman of the board of directors, the warrant specifying briefly the reason for such rearrest and return, and such warrant of rearrest shall be directed and delivered to a person employed by the board of directors, and may be executed by such person in any county of this State where the paroled or conditionally discharged inmate may be found. (1917, c. 264, s. 13; C. S., s. 7359.)

§ 134-65. **Ungovernable inmates removed.**—If it shall appear to the board of directors that any inmate of the institution is or becomes ungovernable, or is exerting an unwholesome influence over any other inmate of the institution, it shall be their duty to certify the same to the Governor of the State, and he thereupon may order such inmate to the State's Prison or to the county jail or to the workhouse in the county in which the inmate was convicted and sentenced, where such person shall serve out her unexpired term of imprisonment. (1917, c. 264, s. 10; C. S., s. 7260.)

§ 134-66. **Reports to be made by directors; inspection by grand jury.**—The board of directors shall at least once a year file with the city and the board of county commissioners of the county in which the institution is situated a full detailed report of the institution, together with the superintendent's reports thereon. It shall be the duty of the grand jury to personally visit and inspect such institutions once every six months, and report to the court the conditions prevailing therein. (1917, c. 264, s. 9; C. S., s. 7361.)

ARTICLE 5.

Eastern Carolina Industrial Training School for Boys.

§ 134-67. **Corporation created; name; powers.**—A corporation to be known and designated as the Eastern Carolina Industrial Training School for Boys is hereby created, and as such corporation and under said name it may sue and be sued, plead and be impleaded, hold, use, and sell and convey real estate, receive gifts and donations and appropriations, and do all other things necessary and requisite for the purposes of its organization as hereinafter specified. (1923, c. 254, s. 1; C. S., s. 7362(a).)

§ 134-68: Repealed by Session Laws 1943, c. 776, s. 15.

§ 134-69. **Establishment and operation of school; boys subject to committal; control; term of detention.**—The trustees are empowered to establish and operate a school for the training and moral and industrial development of the criminally delinquent white boys of the State; and when such school has been organized the trustees may, in their discretion, receive therein such delinquent and criminal boys under the age of twenty years as may be sent or committed thereto under any order or commitment by the judges of the superior courts, the judges of the juvenile courts, or the recorders, or other presiding officers of the city or criminal courts, and shall have the sole right and authority to keep, restrain, and control them during their minority, or until such time as they shall deem proper for their discharge, under proper and humane rules and regulations as may be adopted by the trustees. (1923, c. 254, s. 3; C. S., s. 7362(c); 1937, c. 116.)

§ 134-70. **Selection of location; power and size of purchase.**—The board of trustees shall select a suitable place outside of and away from any city, town or village for the erection of such school, such location to be in the eastern part of North Carolina not farther west than twenty miles west of the main line of the Atlantic Coast Line Railroad, and said board of trustees is empowered to purchase, at some suitable and convenient place, not less than one hundred acres nor more than five hundred acres of land whereon to erect and operate such school. (1923, c. 254, s. 4; C. S., s. 7362(d).)

§ 134-71. **Receipts expended for school; accounting and reports.**—All moneys received by the trustees by private gifts, donations, or otherwise shall be expended in the establishment, operation and maintenance of the school for the training and the moral and industrial development of such delinquent boys, and in securing homes for them; and it shall be their duty to duly account for all moneys so

received by them and to make report of the manner of its expenditure and of the work done by them as hereinafter more particularly provided for. (1923, c. 254, s. 6; C. S., s. 7362(f).)

§ 134-72. **Bonds of superintendent and treasurer.**—The treasurer and superintendent shall, before receiving any of said funds, make a good and sufficient bond, payable to the State of North Carolina, in such sums as may be named by the Governor and approved by the State Treasurer. (1923, c. 254, s. 7; C. S., s. 7362(g).)

§ 134-73. **Enforcement of discipline; discharge of superintendent.**—The superintendent employed by the board is authorized to require obedience from all the inmates of the school, and is entrusted with the authority for correcting and punishing any inmate thereof to the same extent as a parent may under the law impose upon his own child; and the trustees shall have the right at any time to discharge the superintendent for cause. (1923, c. 254, s. 8; C. S., s. 7362(h).)

§ 134-74. **Transfer by order of Governor.**—The Governor of the State may by order transfer any boy under the age of eighteen years, from any jail, chain gang or penitentiary in this State to such school. (1923, c. 254, s. 10; C. S., s. 7362(j).)

§ 134-75. **Work to be conducted.**—There shall be established and conducted on such lands as may be owned in connection with the school, such agriculture, horticulture, workshops, and other pursuits as the board of trustees may deem expedient so as to keep regularly at work all able-bodied inmates. (1923, c. 254, s. 11; C. S., s. 7362(k).)

§ 134-76. **Boys to be received; subjects of instruction.**—The officers of the school shall receive and take into it all boys committed thereto by competent authority, or received therein as aforesaid and shall cause all such boys in the school to be instructed in such rudimentary branches of useful knowledge as may be suited to their various ages and capacities. The boys shall be taught such useful trades and given such manual training as the board may direct, and shall perform such manual labor as the principal or other superintending officers, subject to the direction of the board, may order. All the inmates shall, if possible, be taught the precepts of the Holy Bible, good moral conduct, how to work and to be industrious. (1923, c. 254, s. 12; C. S., s. 7362(1).)

§ 134-77. **Management and control of school; rules and regulations.**—The board of trustees shall have the management and control of the school, and shall have authority to employ a superintendent and such other assistants as they may deem necessary; to fix their salaries, to define their duties, to discharge any employees, and to make any and all rules and regulations as they may deem necessary for the management and conducting of such school under the provisions of this article and not inconsistent therewith. (1923, c. 254, s. 13; C. S., s. 7362(m).)

§ 134-78. **Certificate for removal from school; order of removal.**—If it shall appear to the board of trustees that any inmate of the school is or becomes ungovernable and is exerting an unwholesome influence over any other inmate, it shall be their duty to certify the same to the Governor of the State, and he may order such inmate to the State Prison or to the jail or chain gang in the county in which such inmate was convicted, where such person shall serve out his unexpired term. (1923, c. 254, s. 14; C. S., s. 7362(n).)

ARTICLE 6.

Morrison Training School.

§ 134-79. **Creation of corporation; name; powers.**—A corporation, to be known and designated "The Morrison Training School," hereby created, and as such corporation it is authorized and empowered to accept and use donations and

appropriations, hold real estate by purchase or gift, and do all other things necessary and requisite to be done for the care, discipline and training of negro boys which may be received by said corporation. (1921, c. 190, s. 1; C. S., s. 5912(a); 1937, c. 146.)

§ 134-80: Repealed by Session Laws 1943, c. 776, s. 11.

§ 134-81. Powers of board; board of parole.—The board shall undertake as expeditiously as possible the business of selecting a location and preparing for the opening and maintenance of the Morrison Training School. The board shall have power to appoint and dismiss at will a superintendent and other employees, to make such rules for its own meetings and guidance as it deems necessary; have the general superintendence, management, and control of the institution; of the grounds and buildings, officers, and employees thereof; of the inmates therein, and all matters relating to the government, discipline, contracts, and fiscal concerns thereof; and may make such rules and regulations as may seem to them necessary for carrying out the purposes of the institution. And the board shall have the right to keep, restrain, and control the inmates of the institution until such time as the board may deem proper for their discharge under such proper and humane rules and regulations as the board may adopt. The board shall constitute a board of parole of the institution, and shall have the power to parole and discharge the inmates under such rules and regulations as the board may prescribe, and to retake them upon failure to comply with any requirement of parole. (1921, c. 190, s. 3; C. S., s. 5912(c); 1943, c. 776, s. 11.)

§ 134-82. Delinquents committed to institution; cost; age limit.—Delinquent negro boys, under the age of sixteen years, may be committed to the institution by any juvenile, State, or other court having jurisdiction over such boy, but no boy shall be sent to the institution until the committing agency has received notice from the superintendent that such person can be received. The cost of sending inmates shall be paid by the county or municipality sending the same, as the case may be. In special cases where the public good would seem to be subserved thereby the board shall have the right, upon the request of any court of proper jurisdiction, to receive an inmate above the age of sixteen, but this shall be a matter wholly within the discretion of the board. When any commitment to the institution is made, it shall not be for any specified time, but may continue or terminate at the discretion of the board, not to exceed the age of majority of the inmate. (1921, c. 190, s. 4; C. S., s. 5912(d).)

Power to Commit Permissive.—It would seem that the legislature did not intend that a fifteen-year-old boy, convicted of a capital crime, should be sentenced to a reformatory, but if the statutes be construed to permit such sentence, the power of the court to

impose such sentence is made permissive and not compulsory, and sentence of death upon a conviction of a fifteen-year-old boy of the crime of rape is without error. *State v. Smith*, 213 N. C. 299, 195 S. E. 819 (1938).

§ 134-83. Selection of location of institution; title.—The location of the institution shall be recommended by the board of trustees and approved by the Governor. In the event the location selected is upon property now owned by the State or any other State institution, then the governing body in whom the title is vested is hereby directed and authorized to transfer title to the board of trustees of the Morrison Training School, and turn over to them all or such portions of the said property as the Governor may direct, without compensation, as the Governor may deem proper for the best interests of the State. (1921, c. 190, s. 5; C. S., s. 5912(e).)

§ 134-84. Apportionment of admissions; private or municipal contributions.—In receiving inmates of the institution, the trustees shall distribute such admissions as near as may be in relation to the negro population of the several counties until all the maintenance appropriation from the State is exhausted. If after such maintenance fund is exhausted it be found possible to provide housing space and

control for additional inmates, then the trustees may receive such additional number of inmates as can be cared for upon the payment by private persons or municipal or county authorities of the actual cost of the maintenance of such inmates. County and municipal authorities are hereby given authority to pay such sums in their discretion. (1921, c. 190, s. 6; C. S., s. 5912(f).)

ARTICLE 6A.

State Training School for Negro Girls.

§ 134-84.1. **Creation and name.**—An institution, to be known and designated as State Training School for Negro Girls, is hereby created, and such institution is authorized and empowered to accept and use donations and appropriations and do all other things necessary and requisite to be done in furtherance of the purpose of its organization and existence as hereinafter set forth. (1943, c. 381, s. 1.)

§ 134-84.2. **Under control of North Carolina Board of Juvenile Correction.**—The said institution shall be under the control of the North Carolina Board of Juvenile Correction, and wherever the words “board,” “directors” or “board of directors” are used in this article with reference to the governing board of said institution, the same shall mean the North Carolina Board of Juvenile Correction, and said board shall exercise the same powers and perform the same duties with respect to the State Training School for Negro Girls as it exercises and performs with respect to the other institutions under its control, except as may in this article be otherwise provided. (1943, c. 381, s. 2; 1963, c. 914, s. 4.)

Editor's Note.—The 1963 amendment substituted “Board of Juvenile Correction” for “Board of Correction and Training” in two places in this section.

§ 134-84.3. **Authority to secure real estate and erect buildings.**—The board of directors, with the approval of the Governor and Council of State, is authorized to secure by gift or purchase suitable real estate within the State at such place as the board may deem best for the purpose, and to erect or improve buildings thereon, for carrying out the purposes of the institution; but no real estate shall be purchased nor any commitments made for the erection or permanent improvement of any buildings involving the use of State funds unless and until an appropriation for permanent improvements of the institution is expressly authorized by the General Assembly; but this prohibition shall not prevent the directors from purchasing or improving real estate from funds that may be donated for the purpose. (1943, c. 381, s. 3.)

§ 134-84.4. **Operation of institution before permanent quarters established.**—In order to provide for the operation of the said institution prior to the time that permanent quarters can be established, the board of directors, with the approval of the Governor and Council of State, is authorized and empowered to enter into an agreement with any other State institution or agency for the temporary uses of any State-owned property which such other State institution or agency may be able and willing to divert for the time being from its original purpose; and any other State institution or agency, which may be in possession of real estate suitable for the purpose of the State Training School for Negro Girls and which is not occupied or needed by said institution or agency, is hereby authorized to turn such real estate over to the directors of the State Training School for Negro Girls upon such terms as may be mutually agreed upon. (1943, c. 381, s. 4.)

§ 134-84.5. **Powers and duties of board of directors.**—The board of directors shall have the general superintendence, management, and control of the institution; of the grounds and buildings, officers, and employees thereof; of the inmates therein and all matters relating to the government, discipline, contracts, and fiscal concerns thereof; and may make such rules and regulations as may seem to them necessary

for carrying out the purposes of the institution. And the board shall have the right to keep, restrain, and control the inmates of the institution until such time as the board may deem proper for their discharge under such proper and humane rules and regulations as the board may adopt. The board shall endeavor as far as possible to classify the inmates and keep the different classes in separate wards or divisions, so as to produce the best results in the reformatory work. The board of directors shall constitute a board of parole of the institution and shall have the power to parole and discharge the inmates under such rules and regulations as the board may prescribe. (1943, c. 381, s. 5.)

§ 134-84.6. Superintendent of institution.—The board of directors shall appoint a superintendent of the institution, who shall be a woman of professional social work training and experience and who shall meet the personnel standards, established by the State Board of Public Welfare, and may fix the compensation of the superintendent, subject to the approval of the Budget Bureau, and may discharge the superintendent at any time for cause. (1943, c. 381, s. 6.)

Editor's Note.—By virtue of § 108-1.1, substituted for "State Board of Charities" "State Board of Public Welfare" has been and Public Welfare."

§ 134-84.7. Committal and delivery of girls to institution; no inmate detained after becoming of age.—Any negro girl under the age of sixteen years, who may come or be brought before any juvenile court of the State or other court of competent jurisdiction, and may be found by such court to be in need of institutional training, may be committed by such court to the institution for an indefinite period: Provided, that such person is not insane or mentally or physically incapable of being substantially benefited by the discipline of the institution: Provided, further, that before committing such person to the institution, the court shall ascertain whether the institution is in a position to care for such person; and that it shall be at all times within the discretion of the board of directors as to whether the board will receive any person into the institution. No commitment shall be for any definite term, but any person so committed may be conditionally released or discharged by the board of directors at any time after commitment, but in no case shall any inmate be detained in the institution for a period longer than such time at which she may attain the age of twenty-one years. It shall be the duty of the county authorities of the county from which any girl is sent to the institution or the city authorities, if any is ordered to be sent to the institution by any city court, to see that such girl is safely and duly delivered to the institution, and to pay all the expenses incident to her conveyance and delivery to the institution. (1943, c. 381, s. 7.)

§ 134-84.8. Conditional release of inmates; final discharge.—The superintendent shall have power to grant a conditional release to any inmate of the institution under the rules adopted by the board of directors, and such conditional release may be terminated at any time by the written revocation of the superintendent, which written revocation shall be sufficient authority for any officer of the school or peace officer to apprehend any inmate named in such written revocation, in any county of the State, and to return such inmate to the institution. Final discharge of any inmate of the institution may be granted by the superintendent under rules adopted by the board of directors at any time after such inmate has been admitted to the institution: Provided, however, that final discharge must be granted before such inmate shall arrive at her twenty-first birthday. (1943, c. 381, s. 8.)

§ 134-84.9. Contract to care for certain girls within federal jurisdiction.—The board of directors shall have power and they are hereby authorized, shall it be deemed necessary, to enter into a contract with the office of the United States Attorney General or such necessary federal agency, to keep, restrain, control, care, and train any negro girl under the age of sixteen years, being a citizen of the State of North Carolina, who may come within the jurisdiction of the several federal

courts and who may fall within the classification hereinbefore set forth. Any such contract made under the authority and provisions of this article shall be for a period of not more than two years, and shall provide payments by the office of the United States Attorney General or such necessary federal agency to the institution for the care of any persons coming within the provisions of this article, which shall not be less than the current estimated cost per capita at the time of the execution of the contract, and all such financial provisions of any contract shall first, before the execution of said contract, have the approval of the Budget Bureau of North Carolina. Any payments received under the contract authorized by this article shall be deposited in the State treasury for the use and maintenance of the institution with which any such contract is made. Such payments are hereby appropriated to said institution as a supplementary fund to compensate the institution for the additional care and maintenance of such persons as are received under the provisions of this article. (1943, c. 381, s. 9.)

ARTICLE 7.

Conditional Release and Final Discharge of Inmates of Certain Training and Industrial Schools.

§ 134-85. **Conditional release.**—The superintendent of the State Home and Industrial School for Girls, of the Stonewall Jackson Manual Training and Industrial School, of the Eastern Carolina Industrial Training School for Boys, and of the Morrison Training School for Negro Boys, shall have power to grant a conditional release to any inmate of the institution over which such superintendent presides, under rules adopted by the board of trustees or managers of such institution, and such conditional release may be terminated at any time by the written revocation of such superintendent, which written revocation shall be sufficient authority for any officer of the school or any peace officer to apprehend any inmate named in such written revocation, in any county of the State, and to return such inmate to the institution from which he or she was conditionally released. Such conditional release shall in no way affect any suspended sentence, a condition of which is that the inmate be admitted to and remain at such institution. (1937, c. 145, s. 1.)

Editor's Note.—The Morrison Training School for Negro Boys is now known as the Morrison Training School. See §§ 134-79 and 134-91. Cited in *In re Burnett*, 225 N. C. 646, 36 S. E. (2d) 75 (1945).

§ 134-86. **Final discharge.**—Final discharge of any inmate of any institution enumerated in § 134-85 may be granted by the superintendent of such institution, under rules adopted by the board of directors or managers, at any time after such inmate has been admitted to the institution: Provided, however, that final discharge must be granted before such inmate arrives at his or her twenty-first birthday. (1937, c. 145, s. 2.)

ARTICLE 8.

Care of Persons under Federal Jurisdiction.

§ 134-87. **Certain correctional institutions to make contracts with federal agencies for the care of persons under federal jurisdiction.**—The governing boards of the Stonewall Jackson Manual Training and Industrial School, Morrison Training School for Negro Boys, Eastern Carolina Training School, the State Home and Industrial School for Girls, and the State Industrial Farm Colony for Women may contract with the office of the United States Attorney General, the Bureau of Prisons of the United States Department of Justice, or such necessary federal agency for the care, keeping, correction, training, education, and supervision of delinquent children or other persons under the jurisdiction, custody, or care of the federal courts or of the said office of the United States Attorney General, the Bureau of Prisons of the United States Department of Justice, or such necessary

federal agency, as authorized by the terms of the Federal Juvenile Delinquency Act of one thousand nine hundred thirty-eight, and may receive, accept, hold, train, and supervise such persons as may be received from said courts or department under the rules and regulations of the several and respective institutions as prescribed or as may hereafter be established by the said governing boards, provided, however that such contracts or subsequently established rules of care, procedure, and training, of those committed to said institutions, first shall have been approved by the State Board of Public Welfare. (1939, c. 166, s. 1.)

Editor's Note.—By virtue of § 108-1.1, "State Board of Public Welfare" has been substituted for "State Board of Charities and Public Welfare." The Morrison Training School for Negro Boys is now known as the Morrison Training School. See §§ 134-79 and 134-91.

§ 134-88. Term of contract.—Any contract made under the authority and provision of this article shall be for a period of not more than two years, and shall be renewable from time to time for a period of not to exceed two years. (1939, c. 166, s. 2.)

§ 134-89. Approval by North Carolina Budget Bureau; payments received under contracts.—Any contracts entered into under the provisions of this article by the office of the United States Attorney General, the Bureau of Prisons of the United States Department of Justice, or such necessary federal agency with any of the contracting institutions for the care of any persons coming within the provisions of this article shall not be less than the current estimated cost per capita at the time of execution of the contract, and all such financial provisions of any contract shall, before the execution of said contract, have the approval of the Budget Bureau of North Carolina. Any payments received under the contracts authorized by this article shall be deposited in the State treasury for the use and maintenance of the institution with which any such contract is made. Such payments are hereby appropriated to said institution as a supplementary fund to compensate the institution for the additional care and maintenance of such persons as are received under the provisions of this article. (1939, c. 166, s. 3.)

ARTICLE 9.

State Board of Juvenile Correction.

§ 134-90. State Board of Juvenile Correction created.—There is hereby created a State Board of Juvenile Correction to be composed of nine members, all of whom shall be appointed by the Governor of North Carolina. The Commissioner of Public Welfare shall be an ex officio member without voting power.

The original membership of the Board shall consist of three classes, the first class to serve for a period of two years from the date of appointment, the second class to serve for a period of four years from the date of appointment, and the third class to serve for a period of six years from the date of appointment. At the expiration of the original respective terms of office, all subsequent appointments shall be for a term of six years, except such as are made to fill unexpired terms. Five members of the Board shall constitute a quorum.

Members of the Board shall serve for terms as prescribed in this section, and until their successors are appointed and qualified. The Governor shall have the power to remove any member of the Board whenever, in his opinion, such removal is in the best public interest, and the Governor shall not be required to assign any reason for any such removal. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note.—Session Laws 1947, c. 226, s. 1, rewrote this article which was codified from Session Laws 1943, c. 776, as amended by Session Laws 1945, c. 48, and formerly contained §§ 134-90 through 134-100. See 25 N. C. Law Rev. 404.

Section 2 of the act rewriting this article provides: "This article is not applicable to reformatories or homes for fallen women authorized by article 4, chapter 134 of General Statutes. Nothing contained in this article shall be construed to affect any of

the provisions of §§ 134-49 through 134-66, the same being article 4 of chapter 134 of the General Statutes."

The 1963 amendment, effective July 1, 1963, substituted "State Board of Juvenile

Correction" for "State Board of Correction and Training." The amendatory act also changed the name of this article from "State Board of Correction and Training."

§ 134-91. Powers and duties of the State Board of Juvenile Correction.—

The following institutions, schools and agencies of this State, namely, the Stonewall Jackson Manual Training and Industrial School, the State Home and Industrial School for Girls, Dobb's Farms, the Eastern Carolina Industrial Training School for Boys, the Morrison Training School, and the State Training School for Negro Girls, together with all such other correctional State institutions, schools or agencies of a similar nature, established and maintained for the correction, discipline or training of delinquent minors, now existing or hereafter created, shall be under the management and administrative control of the State Board of Juvenile Correction.

Wherever in §§ 134-1 to 134-48, inclusive, or in §§ 134-67 to 134-89, inclusive, or in any other laws of this State, the words "board of directors," "board of trustees," "board of managers," "directors," "trustees," "managers," or "board" are used with reference to the governing body or bodies of the institutions, schools or agencies enumerated in § 134-90, the same shall mean the State Board of Juvenile Correction provided for in § 134-90, and it shall be construed that the State Board of Juvenile Correction shall succeed to, exercise and perform all the powers conferred and duties imposed heretofore upon the separate boards of directors, trustees or managers of the several institutions, schools or agencies herein mentioned, and said powers and duties shall be exercised and performed as to each of the institutions by the State Board of Juvenile Correction herein provided for. The said Board shall be responsible for the management of the said institutions, schools or agencies and the disbursement of appropriations made for the maintenance and permanent enlargement and repairs of the said institutions, schools or agencies subject to the provisions of the Executive Budget Act, and said Board shall make report to the Governor annually, and oftener if called for by him, of the condition of each of the schools, institutions or agencies under its management and control, and shall make biennial reports to the Governor, to be transmitted by him to the General Assembly, of all moneys received and disbursed by each of said schools, institutions or agencies.

The State Board of Juvenile Correction shall have full management and control of the institutions, schools and agencies named in this article, and shall have power to administer these institutions, schools and agencies in the manner deemed best for the interest of delinquent boys and girls of all races. Similar provisions shall be made for white and negro children in separate schools. Indian children shall be provided for in a manner comparable to that afforded children of the white and negro races. Individual students may be transferred from one institution, school or agency to another, but this authority to transfer individual students does not authorize the consolidation or abandonment of any institution, school or agency. The Board of Juvenile Correction, subject to the approval of the Governor and the Advisory Budget Commission, is authorized to transfer the entire population at Dobb's Farms to the State Home and Industrial School for Girls and to utilize the present facilities at Dobb's Farms as a training school for negro girls.

The State Board of Juvenile Correction is hereby vested with administrative powers over the schools, institutions and agencies set forth in this article, together with all lands, buildings, improvements, and other properties appertaining thereto, and the Board is authorized and empowered to do all things necessary in connection therewith for the care, supervision and training of boys and girls of all races who may be received at any of such schools, institutions or agencies. (1947, c. 226; 1963, c. 914, s. 4.)

Cross Reference.—As to Dobb's Farms, formerly the Industrial Farm Colony for Women, see §§ 134-36 to 134-48.

Editor's Note.—The 1963 amendment, ef-

fective July 1, 1963, substituted "Board of Juvenile Correction" for "Board of Correction and Training" throughout this section.

§ 134-92. Organization of the Board.—The State Board of Juvenile Correction is hereby authorized and given full power to meet and organize, and from their number select a chairman and vice-chairman. The Commissioner of Juvenile Correction hereinafter provided for in this article shall be executive secretary to the Board. All officers of the Board shall serve for a two-year period, which period shall be the same as the State's fiscal biennium. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, substituted "State Board of Juvenile Correction" for "State Board of Correction and Training" and "Commissioner of Juvenile Correction" for "Commissioner of Correction."

§ 134-93. Meetings of the Board.—The State Board of Juvenile Correction shall convene at least four times a year and at places designated by the Board. Insofar as practicable, the place of meetings shall rotate among the several schools and institutions. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, substituted "State Board of Juvenile Correction" for "State Board of Correction and Training."

§ 134-94. Executive committees.—The State Board of Juvenile Correction shall select from its number an executive committee of three members. The powers and duties of the executive committee shall be prescribed by the Board and all actions of this committee shall be reported to the full Board at the next succeeding meeting.

In addition to the executive committee the Board may set up such other committees as may be deemed necessary for the carrying out of the activities of the Board. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, substituted "State Board of Juvenile Correction" for "State Board of Correction and Training" in the first sentence.

§ 134-95. Bylaws, rules and regulations.—The State Board of Juvenile Correction shall make all necessary bylaws, rules and regulations for its own use and for the governing and administering of the schools, institutions and agencies under its control. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, substituted "State Board of Juvenile Correction" for "State Board of Correction and Training."

§ 134-96. Commissioner of Juvenile Correction.—The State Board of Juvenile Correction is hereby authorized and empowered to employ a Commissioner of Juvenile Correction who shall serve all schools, institutions and agencies covered by this article. The Board shall prescribe the duties and salary of the Commissioner of Juvenile Correction, subject to the approval of the Director of the Budget. The Board may employ secretarial help and such other assistants as in its judgment are necessary to give effect to this article, subject, however, to the approval of the Director of the Budget. The administrative and executive powers and duties vested in the State Board of Juvenile Correction, including the authority to appoint, promote, demote, and discharge other personnel employed by the Board, shall be delegated to the Commissioner of Juvenile Correction, to be administered by him in accordance with controlling law under rules and regulations proposed by him and approved by the State Board of Juvenile Correction.

The Commissioner of Juvenile Correction shall be a person of demonstrated executive ability and shall have such special education, training, experience and natural ability in welfare, educational and correctional work as are calculated to qualify him for the discharge of his duties, such training shall include special study in the social sciences and adequate institutional and practical experiences; and he must be a person of good character. He shall devote his full time to the duties of his employment and shall hold no other office, except that he shall serve as secretary to the State Board of Juvenile Correction.

The salary of the Commissioner of Juvenile Correction and his assistants and the expenses incident to maintaining his office, his travel expenses, and the expenses of

the Board members shall be paid out of special appropriations set up for the State Board of Juvenile Correction. The State Board of Public Buildings and Grounds shall provide suitable office space in the city of Raleigh for the Commissioner and his staff. (1947, c. 226; 1963, c. 914, ss. 4, 5.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, added the last sentence of the first paragraph and substituted "State Board of Juvenile Correction" for the "State Board of Correction and Training" and "Commissioner of Juvenile Correction" for "Commissioner of Correction" throughout the section.

§ 134-97. Compensation for members of the Board.—The members of the State Board of Juvenile Correction shall be paid the sum of seven dollars (\$7.00) per day and actual expenses while engaged in the discharge of their official duties. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, substituted "State Board of Juvenile Correction" for "State Board of Correction and Training."

§ 134-98. Election of superintendents.—The State Board of Juvenile Correction shall elect a superintendent for each of the schools, institutions and agencies, covered by this chapter. Each superintendent shall be equipped by professional social work training and experience to understand the needs and problems of adolescent boys and girls, to administer an institutional program and to direct professional staff members and other employees. The superintendents of the several institutions, schools and agencies shall be responsible, with the assistance of the Commissioner of Juvenile Correction, for the employment of all personnel. The superintendents of the several schools and institutions shall likewise have the power to dismiss any employee for incompetence or failure to carry out the work assigned to him.

The superintendents shall make monthly reports to the Commissioner of Juvenile Correction on the conduct and activities of the schools, institutions or agencies, and on the boys and girls under their care, and such reports on the financial and business management of the schools, institutions or agencies as may be required by the Board of Juvenile Correction. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, substituted "Board of Juvenile Correction" for "Board of Correction and Training" and "Commissioner of Juvenile Correction" for "Commissioner of Correction and Training" throughout this section.

§ 134-99. Bonds for superintendents and budget officers.—All superintendents and budget officers shall before entering upon their duties make a good and sufficient bond payable to the State of North Carolina in such form and amount as may be specified by the Governor and approved by the State Treasurer. (1947, c. 226.)

§ 134-100. Who may be committed.—The schools, institutions and agencies enumerated, and others that now exist or may be hereafter established, shall accept and train all delinquent children of all races and creeds under the age of eighteen as may be sent by the judges of the juvenile courts or by judges of other courts having jurisdiction, provided such persons are not mentally or physically incapable of being substantially benefited by the program of the institution, school or agency. (1947, c. 226.)

§ 134-101. Removal request by Board.—If any boy or girl under the care of a State school, institution or agency shall offer violence to a member of the staff or another boy or girl or do or attempt to do injury to the buildings, equipment, or property of the school, or shall by gross or habitual misconduct exert a dangerous or pernicious influence over other boys and girls, the Board of Juvenile Correction may request the court committing said boy or girl or any court of proper jurisdic-

tion to relieve the school of the custody of the boy or girl. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, substituted "Board of Juvenile Correction" for "Board of Correction and Training."

§ 134-102. Transfer by order of Governor.—The Governor of the State may by order transfer any person under the age of eighteen years from any jail or prison in this State to one of the institutions, schools or agencies of correction. (1947, c. 226.)

§ 134-103. Institution to be in position to care for offender before commitment.—Before committing any person to the school, institution or agency, the court shall ascertain whether the school, institution or agency is in a position to care for such person and no person shall be sent to the school, institution or agency until the committing agency has received notice from the superintendent that such person can be received. It shall be at all times within the discretion of the State Board of Juvenile Correction as to whether the Board will receive any qualified person into the school, institution or agency. No commitment shall be made for any definite term but any person so committed may be released or discharged at any time after commitment, as hereinafter provided in this article (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, substituted "State Board of Juvenile Correction" for "State Board of Correction and Training."

§ 134-104. Delivery to institution.—It shall be the duty of the county or city authorities from which the person is sent to the school, institution or agency by any court to see that such person is safely and duly delivered to the school, institution or agency to which committed and to pay all expenses incident to his or her conveyance and delivery to the said school, institution or agency. If the offender be a girl, she must be accompanied by a woman approved by the county director of public welfare. (1947, c. 226; 1961, c. 186.)

Editor's Note.—The 1961 amendment substituted "director" for "superintendent" near the end of the second sentence.

§ 134-105. Return of boys and girls improperly committed.—Whenever it shall appear to the satisfaction of the superintendent of a State school, institution or agency and the State Board of Juvenile Correction that any boy or girl committed to such school, institution or agency is not of a proper age to be so committed, or is not properly committed, or is mentally or physically incapable of being materially benefited by the service of such school, institution or agency, the superintendent, with the approval of the State Board of Juvenile Correction, may return such boy or girl to the committing court to be dealt with in all respects as though he or she had not been so committed. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, substituted "State Board of Juvenile Correction" for "State Board of Correction and Training" in two places in this section.

§ 134-106. Work to be conducted.—There shall be established and conducted on such lands as may be owned in connection with the schools, institutions or agencies such trades, crafts, arts, and sciences suitable to the students and such teachings shall be done with the idea of preparing the students for making a living for themselves after release. Schools shall be maintained of public school standards and operated by teachers holding standard certificates as accepted in State's system of public schools. A recreation program shall be maintained for the health and happiness of all students. The precepts of religion, ethics, morals, citizenship and industry shall be taught to all students. (1947, c. 226.)

§ 134-107. Conditional release; superintendent may grant conditional release; revocation of release.—The Board of Juvenile Correction shall have power to grant conditional release to any person in any school, institution or agency under its jurisdiction and may delegate this power to the superintendents of the various schools, institutions and agencies, under rules and regulations adopted by the Board of Juvenile Correction; such conditional release may be terminated at any time by written revocation by the superintendent, under rules and regulations adopted by the Board of Juvenile Correction; which written revocation shall be sufficient authority for any officer of the school, institution or agency, or any peace officer to apprehend any person named in such written revocation in any county of the State and to return such person to the institution. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, substituted "Board of Juvenile Correction" for "Board of Correction and Training" in three places in this section.

§ 134-108. Final discharge.—Final discharge may be granted by the superintendent under rules adopted by the State Board of Juvenile Correction at any time after admission to the school; provided, however, that final discharge must be granted any person upon reaching his twenty-first birthday. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, substituted "State Board of Juvenile Correction" for "State Board of Correction and Training."

§ 134-109. Return of runaways.—If a boy or girl runs away from a State school, institution or agency, the superintendent may cause him or her to be apprehended and returned to such school, institution or agency. Any employee of the school, institution or agency, or any person designated by the superintendent, or any official of the welfare department, or any peace officer may apprehend and return to the school, institution or agency, without a warrant, a runaway boy or girl in any county of the State, and shall forthwith carry such runaway to the school, institution or agency. (1947, c. 226.)

§ 134-110. Aiding escapees; misdemeanor.—It shall be unlawful for any person to aid, harbor, conceal, or assist in any way any boy or girl who is attempting to escape or who has escaped from any school, institution or agency of correction and any person rendering such assistance shall be guilty of a misdemeanor. (1947, c. 226.)

§ 134-111. State Board of Health to supervise sanitary and health conditions.—The State Board of Health shall have general supervision over the sanitary and health conditions of the several schools, institutions and agencies and shall make periodic examinations of the same and report to the State Board of Juvenile Correction the conditions found with respect to the sanitary and hygienic care of the students. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note.—The 1963 amendment, effective July 1, 1963, substituted "State Board of Juvenile Correction" for "State Board of Correction and Training."

§ 134-112. Care of persons under federal jurisdiction.—The State Board of Juvenile Correction is hereby empowered to make and enter into contractual relations with the proper official of the United States for admission to the State schools, institutions and agencies of such federal juvenile delinquents committed to the custody of such Attorney General as provided in the Federal Juvenile Delinquency Act as would profit from the program and services of the schools, institutions or agencies. (1947, c. 226; 1963, c. 914, s. 4.)

Editor's Note.—The 1963 amendment effective July 1, 1963, substituted "State Board of Juvenile Correction" for "State Board of Correction and Training."

§ 134-113. Term of contract.—Any contract made under the authority and provision of this article shall be for a period of not more than two years and shall

be renewable from time to time for a period of not to exceed two years. (1947, c. 226.)

§ 134-114. Approval by State Budget Bureau.—Any contract entered into under the provisions of this article with the office of the United States Attorney General, the Bureau of Prisons of the United States Department of Justice, or necessary federal agency by any of the contracting institutions for the care of any persons coming within the provisions of this article shall not be less than the current estimated cost per capita at the time of execution of the contract, and all such financial provisions of any contract, before the execution of said contract, shall have the approval of the State Budget Bureau. (1947, c. 226.)

Chapter 135.

Retirement System for Teachers and State Employees; Social Security.

Article 1.

Retirement System for Teachers and State Employees.

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- 135-1. Definitions.
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ARTICLE 1.

Retirement System for Teachers and State Employees.

§ 135-1. **Definitions.**—The following words and phrases as used in this chapter, unless a different meaning is plainly required by the context, shall have the following meanings:

- (1) "Accumulated contributions" shall mean the sum of all the amounts deducted from the compensation of a member and accredited to his individual account in the annuity savings fund, together with regular interest thereon as provided in § 135-8.
- (2) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the board of trustees, and regular interest.
- (3) "Annuity" shall mean payments for life derived from that "accumulated contribution" of a member. All annuities shall be payable in equal monthly installments.
- (4) "Annuity reserve" shall mean the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity, computed upon the basis of such mortality tables as shall be adopted by the board of trustees, and regular interest.

- (5) "Average final compensation" shall mean the average annual compensation of a member during the five consecutive calendar years, within the last ten calendar years of his creditable service, producing the highest such average.
- (6) "Beneficiary" shall mean any person in receipt of a pension, an annuity, a retirement allowance or other benefit as provided by this chapter.
- (7) "Board of trustees" shall mean the board provided for in § 135-6 to administer the Retirement System.
- (8) "Creditable service" shall mean "prior service" plus "membership service" for which credit is allowable as provided in § 135-4.
- (9) "Earnable compensation" shall mean the full rate of the compensation that would be payable to a teacher or employee if he worked in full normal working time. In cases where compensation includes maintenance, the Board of Trustees shall fix the value of that part of the compensation not paid in money.
- (10) "Employee" shall mean all full-time employees, agents or officers of the State of North Carolina or any of its departments, bureaus and institutions other than educational, whether such employees are elected, appointed or employed: Provided, that the term "employee" shall not include any justice of the Supreme Court or any judge of the superior court. "Employee" shall also mean every full-time civilian employee of the army national guard and air national guard of this State who is employed pursuant to section 709 of Title 32 of the United States Code and paid from federal appropriated funds, but held by the federal authorities not to be a federal employee: Provided, however, that the authority or agency paying the salaries of such employees shall deduct or cause to be deducted from each employee's salary the employee's contribution in accordance with applicable provisions of G. S. 135-8 and remit the same, either directly or indirectly, to the Retirement System; coverage of employees described in this sentence shall commence upon the first day of the calendar year or fiscal year, whichever is earlier, next following the date of execution of an agreement between the Secretary of Defense of the United States and the Adjutant General of the State acting for the Governor in behalf of the State, but no credit shall be allowed pursuant to this sentence for any service previously rendered in the above-described capacity as a civilian employee of the national guard.
- (11) "Employer" shall mean the State of North Carolina, the county board of education, the city board of education, the State Board of Education, the board of trustees of the University of North Carolina, the board of trustees of other institutions and agencies supported and under the control of the State, or any other agency of and within the State by which a teacher or other employee is paid.
- (12) "Medical board" shall mean the board of physicians provided for in § 135-6.
- (13) "Member" shall mean any teacher or State employee included in the membership of the System as provided in §§ 135-3 and 135-4.
- (14) "Membership service" shall mean service as a teacher or State employee rendered while a member of the Retirement System.
- (15) "Pension reserve" shall mean the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed upon the basis of such mortality tables as shall be adopted by the board of trustees, and regular interest.
- (16) "Pensions" shall mean payments for life derived from money provided by the State of North Carolina, and by county or city boards of education. All pensions shall be payable in equal monthly installments.
- (17) "Prior service" shall mean service rendered prior to the date of establish-

ment of the Retirement System for which credit is allowable under § 135-4; provided, persons now employed by the State Highway Commission shall be entitled to credit for employment in road maintenance by the various counties and road districts prior to one thousand nine hundred and thirty-one.

- (18) "Public school" shall mean any day school conducted within the State under the authority and supervision of a duly elected or appointed city or county school board, and any educational institution supported by and under the control of the State.
- (19) "Regular interest" shall mean interest compounded annually at such a rate as shall be determined by the board of trustees in accordance with § 135-7, subsection (b).
- (20) "Retirement" shall mean the withdrawal from active service with a retirement allowance granted under the provisions of this chapter.
- (21) "Retirement allowance" shall mean the sum of the "annuity and the pensions," or any optional benefit payable in lieu thereof.
- (22) "Retirement System" shall mean the Teachers' and State Employees' Retirement System of North Carolina as defined in § 135-2.
- (23) "Service" shall mean service as a teacher or State employee as described in subdivision ten or twenty-five of this section.
- (24) "Social Security break-point" shall mean the maximum amount of taxable wages under the Federal Insurance Contributions Act as from time to time in effect.
- (25) "Teacher" shall mean any teacher, helping teacher, librarian, principal, supervisor, superintendent of public schools or any full-time employee, city or county, superintendent of public instruction, or any full-time employee of department of public instruction, president, dean or teacher, or any full-time employee in any educational institution supported by and under the control of the State. In all cases of doubt, the board of trustees, hereinafter defined, shall determine whether any person is a teacher as defined in this chapter.
- (26) "Year" as used in this article shall mean the regular fiscal year beginning July 1 and ending June 30 in the following calendar year unless otherwise defined by regulation of the board of trustees. (1941, c. 25, s. 1; 1943, c. 431; 1945, c. 924; 1947, c. 458, s. 6; 1953, c. 1053; 1955, c. 818; c. 1155, s. 8½; 1959, c. 513, s. 1; c. 1263, s. 1; 1963, c. 687, s. 1.)

Editor's Note.—For comment on this enactment, see 19 N. C. Law Rev. 508.

The 1943 amendment struck out the phrase "where such employment has been continuous" which formerly appeared at the end of subdivision (17).

The 1945 amendment rewrote subdivision (13).

The 1947 amendment deleted the words "and subsequent to one thousand nine hundred and twenty-one" formerly appearing at the end of subdivision (17).

The 1953 amendment rewrote subdivision (1) and deleted the former proviso of subdivision (13).

The first 1955 amendment added subdivision (26), and the second 1955 amendment inserted a sentence in subdivision (1), but such subdivision was rewritten in 1963.

The first 1959 amendment made changes in subdivision (1), but such subdivision was rewritten in 1963.

The second 1959 amendment added the part of subdivision (10) making employees of the national guard eligible for member-

ship in the Teachers' and State Employees' Retirement System. The amendatory act provides that it shall not become effective until such time as federal contributions are made available to the Adjutant General of the State acting for the Governor in behalf of the State for the employers' contribution as required under the applicable provisions of G. S. 135-8, or until State funds for such purposes are made available.

The 1963 amendment, effective July 1, 1963, rewrote subdivisions (1) and (5) and added subdivision (24).

Session Laws 1951, c. 562, ss. 1, 2 added "Social Security" to the title of this chapter and inserted the heading of article 1. Section 3 of the act added all of article 2.

By virtue of G. S. 136-1.1, "State Highway Commission" in subdivision (17) has been substituted for "State Highway and Public Works Commission."

Retirement Law Is Valid.—It is the verdict of the General Assembly, embodied and expressed in this and the following sections, that the Retirement Plan has a

definite relation to the just and efficient administration of the public school system which brings it within the scope of constitutional authority. Under the mandatory provisions of the Retirement Law, the public policy thus expressed is applied to the entire public school system and its administration at the hands of every administrative unit within it. *Bridges v. Charlotte*, 221 N. C. 472, 20 S. E. (2d) 825 (1942).

The Retirement Law is sufficiently invested with a public purpose and is a constitutional and valid expression of the legislative will, both generally and in its application to the local administrative units

with which it deals. *Bridges v. Charlotte*, 221 N. C. 472, 20 S. E. (2d) 825 (1942).

The purpose of this and the following sections is to provide benefits on retirement for the teachers in the public school system of the State and for State employees. It is based not only upon the principle of justice to poorly paid State employees, but also upon the philosophy that a measure of freedom from apprehension of old age and disability will add to the immediate efficiency of those engaged in carrying on a work of first importance to society and the State. *Bridges v. Charlotte*, 221 N. C. 472, 20 S. E. (2d) 825 (1942).

§ 135-1.1. Licensing and examining boards.—Any State board or agency charged with the duty of administering any law relating to the examination and licensing of persons to practice a profession, trade or occupation, in its discretion, may elect, by an appropriate resolution of said board, to cause its employees to become members of the Teachers' and State Employees' Retirement System. Such Retirement System coverage shall be conditioned on such board's paying all of the employer's contributions or matching funds from funds of the board and on such board's collecting from its employees the employees' contributions, at such rates as may be fixed by law and by the regulations of the board of trustees of the Retirement System, all of such funds to be paid to the Retirement System and placed in the appropriate funds. Retroactive coverage of the employees of any such board may also be effected to the extent that such board requests provided the board pays all of the employer's contributions or matching funds necessary for such purpose and provided said board collects from its employees all employees' contributions necessary for such purpose, computed at such rates and in such amount as the board of trustees of the Retirement System determines, all of such funds to be paid to the Retirement System, together with such interest as may be due, and placed in the appropriate funds. (1959, c. 1012.)

§ 135-2. Name and date of establishment.—A retirement system is hereby established and placed under the management of the board of trustees for the purpose of providing retirement allowances and other benefits under the provisions of this chapter for teachers and state employees of the State of North Carolina. The retirement system so created shall be established as of the first day of July, one thousand nine hundred and forty-one.

It shall have the power and privileges of a corporation and shall be known as the "Teachers' and State Employees' Retirement System of North Carolina," and by such name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held. (1941, c. 25, s. 2.)

§ 135-3. Membership.—The membership of this Retirement System shall be composed as follows:

- (1) All persons who shall become teachers or state employees after the date as of which the Retirement System is established. On and after July 1, 1947, membership in the Retirement System shall begin ninety days after the election, appointment or employment of a "teacher or employee" as the terms are defined in this chapter. On and after July 1, 1955, membership in the Retirement System shall begin immediately upon the election, appointment or employment of a "teacher or employee," as the terms are defined in this chapter. Provided, that every person who is employed by the State as a State highway patrolman or other law enforcement officer as defined in G. S. 143-166 (m) shall automatically become a member of the Teachers' and State Employees' Retirement System unless such person shall, within fifteen days after his employment, become a member of the Law Enforcement Officers' Benefit and Retirement Fund, in

which event such person shall not be entitled to membership in the Teachers' and State Employees' Retirement System; provided, that any such State employee who joins said fund and is later transferred to a position other than one described in G. S. 143-166 (m) shall be enrolled in the Teachers' and State Employees' Retirement System and in addition thereto be entitled to transfer to this Retirement System his contributions in lump sum and credits for membership and prior service standing to his credit in the Law Enforcement Officers' Benefit and Retirement Fund. Upon request for transfer of such credits, the State's employer contributions shall also be paid to the Teachers' and State Employees' Retirement System by the executive secretary of the Law Enforcement Officers' Benefit and Retirement Fund. This right shall apply retroactively in the case of any member who heretofore has transferred to nonlaw enforcement duties. Under such rules and regulations as the board of trustees may establish and promulgate, Co-operative Agricultural Extension Service employees may, in the discretion of the governing authority of a county, become members of the Teachers' and State Employees' Retirement System to the extent of that part of their compensation derived from a county.

- (2) All persons who are teachers or State employees on February 17, 1941, or who may become teachers or State employees on or before July first, one thousand nine hundred and forty-one, except those who shall notify the board of trustees, in writing, on or before January first, one thousand nine hundred and forty-two, that they do not choose to become members of this Retirement System, shall become members of the Retirement System.
- (3) Should any member in any period of six consecutive years after becoming a member be absent from service more than five years, or should he withdraw his accumulated contributions, or should he become a beneficiary or die, he shall thereupon cease to be a member.
- (4) Notwithstanding any provisions contained in this section, any employee of the State of North Carolina who was taken over and required to perform services for the federal government, on a loan basis, and by virtue of an executive order of the President of the United States effective on or after January first, one thousand nine hundred and forty-two, and who on the effective date of such executive order was a member of the Retirement System and had not withdrawn all of his or her accumulated contributions, shall be deemed to be a member of the Retirement System during such period of federal service or employment by virtue of such executive order of the President of the United States. Any such employee who within a period of twelve months after the cessation of such federal service or employment, is again employed by the State or any employer as said term is defined in this chapter, or within said period of twelve months engages in service or membership service, shall be permitted to resume active participation in the Retirement System and to resume his or her contributions as provided by this chapter. If such member so elects, he or she may pay to the board of trustees for the benefit of the proper fund or account an amount equal to his or her accumulated contributions previously withdrawn with interest from date of withdrawal to time of payment and the accumulated contributions, with interest thereon, that such member would have made during such period of federal employment to the same extent as if such member had been in service or engaged in the membership service for the State or an employer as defined in this chapter, which such payment of accumulated contributions shall be computed on the basis of the salary or earnable

compensation received by such member on the effective date of such executive order.

- (5) Any teacher or State employee whose membership is contingent on his own election and who elects not to become a member may thereafter apply for and be admitted to membership; but no such teacher or State employee shall receive prior service credit unless he elected to become a member prior to July 1, 1946.
- (6) No person who becomes a "teacher or employee," as the terms are defined in this chapter, shall be or become a member of the Retirement System who is elected, appointed or employed after he has attained the age of sixty years.
- (7) The provisions of this subdivision (7) shall apply to any member whose retirement became effective prior to July 1, 1963 and who became entitled to benefits hereunder in accordance with the provisions hereof. Such benefits shall be computed in accordance with the provisions of § 135-5 (b) as in effect at the date of such retirement.

- a. Notwithstanding any other provision of this chapter, any member who separates from service prior to the attainment of the age of 60 years for any reason other than death or retirement for disability as provided in § 135-5, subsection (d), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years: Provided, that such member may retire only upon written application to the board of trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the provisions of § 135-5, subsection (b), subdivisions (1), (2) and (3).

- b. In lieu of the benefits provided in paragraph a of this subdivision (7), any member who separates from service on or after July 1, 1951 and prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in § 135-5, subsection (d), after completing 30 or more years of creditable service, and who leaves his total accumulated contributions in said System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the board of trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided further that such application shall be duly filed within 60 days following the date of such separation. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of 60 years upon proper application therefor.

- c. In lieu of the benefits provided in paragraph a of this subdivision (7), any member who separated from service before July 1, 1951 and prior to the age of 60 years for any reason other than death or retirement for disability as provided in § 135-5, subsection (d), and who left his total accumulated contributions in said System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the board of trustees setting forth at what time, subsequent to

July 1, 1951 and not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided that such application shall be duly filed not later than August 31, 1951. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of 60 years upon proper application therefor.

- d. Should a teacher or employee who retired on an early retirement allowance be restored to service prior to the attainment of the age of 60 years, his allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the uniform contribution rate payable by all members. Upon his subsequent retirement, he shall be entitled to an allowance computed, subject to the provisions of chapter 135, in accordance with such rules and regulations as the board of trustees may establish and promulgate as provided in § 135-15; provided that, should such restoration occur on or after the attainment of the age of 55 years, his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration and the pension that he would have received on account of his service since his last restoration had he entered service at the time as a new entrant.
- (8) The provisions of this subdivision (8) shall apply to any member whose membership is terminated on or after July 1, 1963 and who becomes entitled to benefits hereunder in accordance with the provisions hereof. Such benefits shall be computed in accordance with the provisions of § 135-5 (b1).
- a. Notwithstanding any other provision of this chapter, any member who separates from service prior to the attainment of the age of sixty years for any reason other than death or retirement for disability as provided in § 135-5, subsection (c), after completing 15 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of sixty years; provided that such member may retire only upon written application to the board of trustees setting forth at what time, not less than thirty (30) days nor more than ninety (90) days subsequent to the execution and filing thereof, he desires to be retired. Such deferred retirement allowance shall be computed in accordance with the provisions of § 135-5, subsection (b1).
 - b. In lieu of the benefits provided in paragraph a of this subdivision (8), any member who separates from service on or after July 1, 1963 and prior to the attainment of the age of sixty years, for any reason other than death or retirement for disability as provided in § 135-5, subsection (c), after completing 20 or more years of creditable service and after attaining the age of fifty years, and who leaves his total accumulated contributions in said System, may elect to retire on an early retirement allowance; provided that such member may so retire only upon written application to the board of trustees setting forth at what time, not less than thirty (30) days nor more than ninety (90) days subsequent to the execution and filing thereof, he desires to be retired; provided further that such application shall be duly filed within sixty (60) days following the date of such separa-

tion. Such early retirement allowance so elected shall be the actuarial equivalent of the deferred retirement allowance otherwise payable at the attainment of the age of sixty years upon proper application therefor.

- c. The provisions of paragraph d of the preceding subdivision (7) shall apply equally to this subdivision (8). (1941, c. 25, s. 3; 1945, c. 799; 1947, c. 414; c. 457, ss. 1, 2; c. 458, s. 5; c. 464, s. 2; 1949, c. 1056, s. 1; 1951, c. 561; 1955, c. 1155, s. 9½; 1961, c. 516, ss. 1, 2; 1963, c. 687, s. 2.)

Editor's Note.—The 1945 amendment added subdivision (4).

The first 1947 amendment added subdivision (5); the second amendment added subdivision (6) and the second sentence of subdivision (1); the third amendment added subdivision (7); and the fourth amendment substituted "twelve months" for "six months" in the second sentence of subdivision (4).

The 1949 amendment added at the end of subdivision (5) the words "unless he elected to become a member prior to July 1, 1946."

The 1951 amendment rewrote subdivision (7).

The 1955 amendment added the third sentence to subdivision (1).

The 1961 amendment added all of subdivision (1) beginning with "Provided" in the fourth sentence. It also deleted the former last proviso to the first sentence of paragraph a of subdivision (7) and the last sentence thereof.

The 1963 amendment, effective July 1,

1963, added the first paragraph of subdivision (7) and all of subdivision (8).

Section 135-15 referred to in paragraph d of subdivision (7) has been repealed. It related to the re-employment of retired teachers and employees during World War II, etc.

Teachers at Fort Bragg Schools Who Have Taught in State Public Schools.—Session Laws 1953, c. 792, authorizes the board of trustees of the Teachers' and State Employees' Retirement System, in its discretion, to contract with the Fort Bragg School Board, the United States Office of Education, or the United States Commissioner of Education or his officers and agents, whereby teachers in the schools controlled and operated by the Fort Bragg School Board, who have previously taught in State public schools and accumulated creditable service of some type under the Teachers' and State Employees' Retirement Act, shall be covered under the provisions of the Act.

§§ 135-3.1, 135-3.2: Repealed by Session Laws 1961, c. 516, s. 9.

§ 135-4. Creditable service.—(a) Under such rules and regulations as the board of trustees shall adopt, each member who was a teacher or State employee at any time during the five years immediately preceding the establishment of the System and who became a member prior to July 1, 1946 shall file a detailed statement of all North Carolina service as a teacher or State employee rendered by him prior to the date of establishment for which he claims credit; provided, that any person who is a member of the Teachers' and State Employees' Retirement System on July 1, 1963 and who was previously employed by a participating unit of the North Carolina Local Governmental Employees' Retirement System and who terminated his service with such unit prior to its participation in the North Carolina Local Governmental Employees' Retirement System shall file a detailed statement of all service to such political entity. Certification of such service shall be furnished to the Teachers' and State Employees' Retirement System.

(b) The board of trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one year of service, but in no case shall more than one year of service be creditable for all services in one year. Service rendered for the regular school year in any district shall be equivalent to one year's service.

(c) Subject to the above restrictions and to such other rules and regulations as the board of trustees may adopt, the board of trustees shall verify, as soon as practicable after the filing of such statements of service, the service therein claimed.

In lieu of a determination of the actual compensation of the members that was received during such period of prior service the board of trustees may use for the purpose of this chapter the compensation rates which will be determined by the

average salary of the members for five years immediately preceding the date this System became operative as the records show the member actually received.

(d) Upon verification of the statements of service, the board of trustees shall issue prior service certificates certifying to each member the period of service prior to the establishment of the Retirement System, with which the member is credited on the basis of his statement of service. So long as membership continues a prior service certificate shall be final and conclusive for retirement purposes as to such service: Provided, however, that any member may, within one year from the date of issuance or modification of such certificate, request the board of trustees to modify or correct his prior service certificate.

When membership ceases, such prior service certificate shall become void. Should the teacher or State employee again become a member, such teacher or State employee shall enter the System as a teacher or State employee not entitled to prior service credit except as provided in § 135-5, subsection (e), subdivision (2).

(e) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership service rendered by him since he last became a member, and also if he has a prior service certificate which is in full force and effect, the amount of service certified on his prior service certificate.

(f) Teachers and other State employees who entered the armed services of the United States on or after September sixteenth, one thousand nine hundred and forty, and prior to February seventeenth, one thousand nine hundred and forty-one and who returned to the service of the State within a period of two years after they have been honorably discharged from the armed services of the United States, shall be entitled to full credit for all prior service. Teachers and other State employees who entered the armed services of the United States on or after September 16, 1940, and who returned to the service of the State prior to October 1, 1952 after they have been honorably discharged from such armed services shall be entitled to full credit for all prior service, and, in addition, they shall receive membership service credit for the period of service in such armed services occurring after the date of establishment. Teachers and other State employees who enter the armed services of the United States on or after July 1, 1950, or who engage in active military service on or after July 1, 1950, and who return to the service of the State within a period of two years after being separated or released, or becoming entitled to be separated or released, from such active military service under other than dishonorable conditions shall be entitled to full membership service credit for the period of such active service in the armed services. Under such rules as the board of trustees shall adopt, credit will be provided by the Retirement System with respect to each such teacher or other State employee in the amounts that he would have been paid during such service in such armed services on the basis of his earnable compensation when such service commenced. Such contributions shall be credited to the individual account of the member in the annuity savings fund, in such manner as the board of trustees shall determine, but any such contributions so credited and any regular interest thereon shall be available to the member only in the form of an annuity, or benefit in lieu thereof, upon his retirement on a service, disability or special retirement allowance; and in the event of cessation of membership or death prior thereto, any such contributions so credited and regular interest thereon shall not be payable to him or on his account, but shall be transferred from the annuity savings fund to the pension accumulation fund. If any payments were made by a member on account of such service as provided by subdivision (5) of subsection (b) of § 135-8, the board of trustees shall refund to or reimburse such member for such payments. The provisions of this subsection shall also apply to members of the national guard with respect to teachers and State employees who are called into federal service or who are called into State service, to the extent that such persons fail to receive compensation for performance of the duties of their employment other than for service in the national guard.

(g) Teachers and other State employees who served in the armed forces of the

United States and who, after being honorably discharged, returned to the service of the State within a period of two years from date of discharge shall be credited with prior service for such period of service in the armed forces of the United States; and the salaries or compensations paid to such employees immediately before entering the armed forces shall be deemed to be the actual compensation rates of such teachers and State employees during said period of service. (1941, c. 25, s. 4; 1943, cc. 200, 783; 1945, c. 797; 1947, c. 575; 1949, c. 1056, ss. 2, 4; 1953, c. 1050, s. 3; 1959, c. 513, s. 1½; 1961, c. 516, s. 3; c. 779, s. 2; 1963, c. 1262.)

Editor's Note.—The first 1943 amendment substituted "five years" for "year" in subsection (a). The second 1943 amendment added subsection (f). The 1945 amendment inserted near the beginning of the first sentence of subsection (f) the words "on or." The 1947 amendment added subsection (g). The 1949 amendment rewrote subsection (a) and added the second and last three sentences of subsection (f).

The 1953 amendment inserted the third sentence of subsection (f).

The 1959 amendment rewrote the third sentence of subsection (f) and added the last sentence thereof.

The first 1961 amendment substituted "September 16, 1940" for "February 17, 1941" in the second sentence of subsection (f) and rewrote the fourth sentence thereof. The second 1961 amendment substituted "October 1, 1952" for "July 1, 1950" in the second sentence of subsection (f).

The 1963 amendment added the proviso and the last sentence in subsection (a).

§ 135-5. Benefits.—(a) Service Retirement Benefits.—

(1) Any member in service may retire upon written application to the board of trustees setting forth at what time, as of the first day of a calendar month, not less than thirty days nor more than ninety days subsequent to the execution of and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of sixty years, and notwithstanding that, during such period of notification, he may have separated from service.

(2) Effective July 1, 1960, any member in service shall automatically be retired as of July 1, 1960, if he has then attained the age of sixty-five years, otherwise as of the subsequent July first coincident with or next following his sixty-fifth birthday: Provided that upon the recommendation of his employer, made on such form and under such conditions as the board of trustees may require, and with the approval of the board of trustees any such member may continue in service for one additional year following each such annual recommendation and approval.

(b) Service Retirement Allowances of Persons Retiring on or after July 1, 1959 but prior to July 1, 1963.—Upon retirement from service on or after July 1, 1959 but prior to July 1, 1963, a member shall receive a service retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(2) A pension equal to the annuity allowable at the age of sixty-five years or at his retirement age, whichever is the earlier age, computed on the basis of contributions made prior to such earlier age; and

(3) If he has a prior service certificate in full force and effect, an additional pension which shall be equal to the sum of:

a. The annuity which would have been provided at his retirement age by the contributions which he would have made during such prior service had the System been in operation and had he contributed thereunder at the rate of six and twenty-five hundredths per centum (6.25%) of his compensation; and

b. The pension which would have been provided on account of such contributions at age sixty-five, or at his retirement age, whichever is the earlier age.

If the member has not less than twenty (20) years of creditable service, he shall be entitled to a total retirement allowance of not less than seventy dollars (\$70.00) per month; provided that the computation shall be made prior to any reduction

resulting from the selection of an optional allowance as provided by subsection (g) of this section.

(b1) Service Retirement Allowances of Members Retiring on or after July 1, 1963.—Upon retirement from service, in accordance with subsection (a) above, on or after July 1, 1963, a member shall receive a service retirement allowance computed as follows:

- (1) If the member's service retirement date occurs on or after his 65th birthday, such allowance shall be equal to one per cent (1%) of the portion of his average final compensation not in excess of the Social Security break-point, plus one and one-half per cent ($1\frac{1}{2}\%$) of the portion of such compensation in excess of such break-point, multiplied by the number of years of his creditable service.
- (2) If the member's service retirement date occurs before his 65th birthday, his service retirement allowance shall be computed as in (1) above, but shall be reduced by five-twelfths of one per cent ($\frac{5}{12}$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
- (3) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963 shall receive not less than the benefit provided by G. S. 135-5 (b).

(c) Disability Retirement Benefits.—Upon the application of a member in service of his employer, any member who has had ten or more years of creditable service may be retired by the board of trustees, not less than thirty and not more than ninety days next following the date of filing such application, on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired.

(d) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1959 but prior to July 1, 1963.—Upon retirement of disability, in accordance with subsection (c) above, on or after July 1, 1959 but prior to July 1, 1963, a member shall receive a service retirement allowance if he has attained the age of sixty years, otherwise he shall receive a disability retirement allowance which shall consist of:

- (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement;
- (2) A pension equal to seventy-five per centum (75%) of the pension that would have been payable upon service retirement at the age of sixty-five years had the member continued in service to the age of sixty-five years without further change in compensation.

If the member has not less than twenty (20) years of creditable service, he shall be entitled to a total retirement allowance of not less than seventy dollars (\$70.00) per month; provided, that the computation shall be made prior to any reduction resulting from an optional allowance as provided by subsection (g) of this section.

(d1) Allowance on Disability Retirement of Persons Retiring on or after July 1, 1963.—Upon retirement for disability, in accordance with subsection (c) above, on or after July 1, 1963, a member shall receive a service retirement allowance if he has attained the age of sixty years, otherwise he shall receive a disability retirement allowance which shall be computed as follows:

- (1) Such allowance shall be equal to the service retirement allowance which would have been payable had he continued in service without further change in compensation, to the age of sixty years, minus the actuarial equivalent to the contributions he would have made during such continued service.
- (2) Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1963 shall receive not less than the benefit provided by G. S. 135-5 (d).

(e) Re-Examination of Beneficiaries Retired for Disability.—Once each year during the first five years following retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the board of trustees may, and upon his application shall, require any disability beneficiary who has not yet attained the age of sixty years to undergo a medical examination, such examination to be made at the place of residence of said beneficiary or other place mutually agreed upon, by a physician or physicians designated by the board of trustees. Should any disability beneficiary who has not yet attained the age of sixty years refuse to submit to at least one medical examination in any such year by a physician or physicians designated by the board of trustees, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one year all his rights in and to his pension may be revoked by the board of trustees.

- (1) Should the medical board report and certify to the board of trustees that such disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and the average final compensation, and should the board of trustees concur in such report, then the amount of his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, shall equal the amount of his average final compensation. Should his earning capacity be later changed, the amount of his pension may be further modified: Provided, that the new pension shall not exceed the amount of the pension originally granted nor an amount which, when added to the amount earnable by the beneficiary together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation shall not become a member of the Retirement System.
- (2) Should a disability beneficiary under the age of sixty years be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, he shall again become a member of the Retirement System, and he shall contribute thereafter at the same rate he paid prior to disability. Any such prior service certificate on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect, and in addition, upon his subsequent retirement he shall be credited with all his service as a member, but should he be restored to active service on or after the attainment of the age of fifty years his pension upon subsequent retirement shall not exceed the sum of the pension which he was receiving immediately prior to his last restoration and the pension that he would have received on account of his service since his last restoration had he entered service at the time as a new entrant.

(f) Return of Accumulated Contributions.—Should a member cease to be a teacher or State employee except by death or retirement under the provisions of this chapter, he shall be paid upon his request the sum of his contributions and one half of the accumulated regular interest thereon. Provided that, if the member at the time of separation from service shall have attained the age of sixty years or is otherwise entitled to a retirement allowance under this chapter, he shall be paid the amount of his accumulated contributions plus the full amount of his accumulated regular interest thereon. Upon payment of such sum his membership in the System shall cease and, if he thereafter again becomes a member, no credit shall be allowed for any service previously rendered; and such payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable hereunder. Upon receipt of proof satisfactory to the board of trustees of the death, prior to retirement, of a member or former member there shall be paid to his legal representatives or to such person as he shall have nominated by written designation duly acknowledged and filed with the board of trustees, the amount of his accumulated contributions at the time of his death. Notwithstanding any other provision of chapter 135,

there shall be deducted from any amount otherwise payable hereunder any amount due any agency or subdivision of the State by the member by reason of any outstanding overpayment of salary or by reason of the embezzlement of fees collected by the member for any agency or subdivision of the State; provided that, notwithstanding any other provisions of this chapter, even if the member fails to demand the return of his accumulated contributions within ninety days from the day he ceases to be a teacher or State employee, any amount due such agency or subdivision by reason of any outstanding overpayment of salary or embezzlement of fees shall be paid to such agency or subdivision by the Retirement System upon demand; provided, further, that such agency or subdivision shall have notified the executive secretary of any amount so due and that the Retirement System shall have no liability for amounts so deducted and transmitted to such agency or subdivision nor for any failure by the Retirement System for any reason to make such deductions.

(g) Election of Optional Allowance.—With the provision that no optional election shall be effective in case the beneficiary dies within thirty days after retirement or within thirty days after the date such election is made if such date is after his attainment of age sixty, until the first payment on account of any benefit becomes normally due, or his first retirement check has been cashed, any member may elect to receive his benefit in a retirement allowance payable throughout life, or he may elect to receive the actuarial equivalent of such retirement allowance in a reduced allowance payable throughout life under the provisions set forth in Option one, two or three below. Neither the election of Option two or three nor the nomination of the person thereunder may be revoked or changed by the member after such optional election has become effective, but if such person nominated dies prior to the date the first payment of such benefit becomes normally due the election shall thereby be revoked. Any member dying in service after his optional election has become effective shall be presumed to have retired on the date of his death.

Option 1. (a) In the Case of a Member Who Retires Prior to July 1, 1963.—If he dies before he has received in annuity payments the present value of his annuity as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees.

(b) In the Case of a Member Who Retires on or after July 1, 1963.—If he dies within ten (10) years from his retirement date, an amount equal to his accumulated contributions at retirement, less 1/120th thereof for each month for which he has received a retirement allowance payment, shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees; or

Option 2. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option 3. Upon his death, one-half of his reduced retirement allowance shall be continued throughout the life of, and paid to such person as he shall nominate by written designation duly acknowledged and filed with the board of trustees at the time of his retirement; or

Option 4. Adjustment of Retirement Allowance for Social Security Benefits.—Until the first payment on account of any benefit becomes normally due, any member may elect to convert his benefit otherwise payable on his account after retirement into a retirement allowance of equivalent actuarial value of such amount that with his benefit under Title II of the Federal Social Security Act, he will receive, so far as possible, approximately the same amount per year before and after the earliest age at which he becomes eligible, upon application therefor, to receive a Social Security benefit. A member who makes an election in accordance with this option shall be deemed to have made a further election of Option 1 above.

(h) Computation of Benefits Payable Prior or Subsequent to July 1, 1947.—

Prior to July 1, 1947, all benefits payable as of the effective date of this act shall be computed on the basis of the provisions of chapter 135 as they existed at the time of the retirement of such beneficiaries. On and after July 1, 1947, all benefits payable to, or on account of, such beneficiaries shall be adjusted to take into account, under such rule as the board of trustees may adopt, the provisions of this act as if they had been in effect at the date of retirement, and no further contributions on account of such adjustment shall be required of such beneficiaries. The board of trustees may authorize such transfers of reserve between the funds of the retirement system as may be required by the provisions of this subsection.

(i) Restoration to Service of Certain Former Members.—If a former member who ceased to be a member prior to July 1, 1949, for any reason other than retirement, again becomes a member and prior to July 1, 1951, redeposits in the annuity savings fund by a single payment the amount, if any, he previously withdrew therefrom, he shall, anything in this chapter to the contrary, be entitled to any membership service credits he had when his membership ceased, and any prior service certificate which became void at the time his membership ceased shall be restored to full force and effect: Provided, that, for the purpose of computing the amount of any retirement allowance which may become payable to or on account of such member under the Retirement System, any amount redeposited as provided herein shall be deemed to represent contributions made by the member after July 1, 1947.

(j) Notwithstanding anything herein to the contrary, effective July 1, 1959, the following provisions shall apply with respect to any retirement allowance payments due after such date to any retired member who was retired prior to July 1, 1959, on a service or disability retirement allowance:

(1) If such retired member has not made an election of an optional allowance in accordance with § 135-5 (g), the monthly retirement allowance payable to him from and after July 1, 1959, shall be equal to the allowance previously payable, increased by fifteen per cent (15%) thereof, or by fifteen dollars (\$15.00), whichever is the lesser; provided that, if such member had rendered not less than twenty years of creditable service, the retirement allowance payable to him from and after July 1, 1959, shall be not less than seventy dollars (\$70.00) per month.

(2) If such retired member has made an effective election of an optional allowance, the allowance payable to him from and after July 1, 1959, shall be equal to the allowance previously payable under such election plus an increase which shall be computed in accordance with (1) above as if he had not made such an election; provided that such increase shall be payable only during the retired member's remaining life and no portion of such increase shall become payable to the beneficiary designated under the election.

(k) The provisions of this section as to the time of giving of notice of retirement shall be construed to be mandatory and not directory.

(l) No action shall be commenced against the State or the Retirement System by any retired member or beneficiary respecting any deficiency in the payment of benefits more than three years after such deficient payment was made, and no action shall be commenced by the State or the Retirement System against any retired member or former member or beneficiary respecting any overpayment of benefits or contributions more than three years after such overpayment was made. (1941, c. 25, s. 5; 1945, c. 218; 1947, c. 458, ss. 3, 4, 7, 8a; 1949, c. 1056, ss. 3, 5; 1955, c. 1155, ss. 1, 2; 1957, c. 855, ss. 5-8; 1959, c. 490; c. 513, ss. 2, 3; c. 620, ss. 1-3; c. 624; 1961, c. 516, s. 4; c. 779, s. 1; 1963, c. 687, s. 3.)

Editor's Note.—The 1945 amendment made changes in subsection (f). The 1947 amendment rewrote subdivisions (2) and (3) of subsection (b). It also rewrote subsection (f) and added former subsection (i) [now subsection (h)]. The 1949 amend-

ment added the former second sentence (now fourth) of subsection (f) and all of former subsection (j) [now subsection (i)].

The 1955 amendment added subdivision (3) to subsection (d). It also added what is now Option 4 under subsection (g).

The 1957 amendment rewrote the second [now fourth] sentence of subsection (f) and added the third [now fifth] sentence thereto. The amendment also rewrote the portion of subsection (g) preceding "Option 1," and added the second sentence of what is now Option 4 under subsection (g).

The first 1959 amendment inserted, near the beginning of subdivision (1) of subsection (a), the words "as of the first day of a calendar month." It also inserted, near the middle of subsection (g), the words "or his first retirement check has been cashed," and added subsection (k).

The second 1959 amendment rewrote the first sentence of subsection (f) and added the second [now third] sentence thereof, added Option 4 to subsection (g), deleted former subsection (h) which pertained to the same subject as present Option 4 of subsection (g) and renumbered subsections (i) and (j) as (h) and (i), respectively.

The third 1959 amendment rewrote subdivision (2) and deleted subdivision (3) of subsection (a), rewrote subsection (b) and added subsection (j).

The fourth 1959 amendment changed subsection (d) by substituting "sixty-five" for "sixty" in subdivision (2) and by inserting a period in place of the semicolon and the word "and" at the end of the subdivision. It also struck out subdivision (3) and added a new paragraph at the end of the subsection.

The first 1961 amendment inserted the present second sentence of subsection (f)

and rewrote the last sentence thereof. It also added subsection (l) at the end of the section.

The second 1961 amendment deleted "and prior to his attainment of age sixty-five" formerly appearing after "retirement" near the beginning of subsection (g). It also substituted "sixty" for "sixty-five" near the beginning thereof.

The 1963 amendment, effective July 1, 1963, inserted "but prior to July 1, 1963" in the opening paragraph of subsection (b), added subsection (b1), inserted "in accordance with subsection (c) above, on or after July 1, 1959 but prior to July 1, 1963" in the opening paragraph of subsection (d) and added subsection (d1). The amendment also rewrote Option 1 in subsection (g) and substituted, at the end of the first sentence of Option 4 in subsection (g), the words "the earliest age at which he becomes eligible, upon application therefor, to receive a Social Security benefit" for "age sixty-five (65) in the case of a man or age sixty-two (62) in the case of a woman."

The retirement payment provided by this section constitutes delayed compensation in consideration of services rendered. It is compensation for public services. Its purpose is to induce experienced and competent teachers to remain in service and thus promote the efficiency and effectiveness of the educational program. *Bridges v. Charlotte*, 221 N. C. 472, 20 S. E. (2d) 825 (1942).

§ 135-6. Administration.—(a) Administration by Board of Trustees; Corporate Name; Rights and Powers; Tax Exemption.—The general administration and responsibility for the proper operation of the Retirement System and for making effective the provisions of the chapter are hereby vested in a board of trustees which shall be organized immediately after a majority of the trustees provided for in this section shall have qualified and taken the oath of office.

The board of trustees shall be a body politic and corporate under the name "Board of Trustees Teachers' and State Employees' Retirement System;" and as a body politic and corporate shall have the right to sue and be sued shall have perpetual succession and a common seal, and in said corporate name shall be able and capable in law to take, demand, receive and possess all kinds of real and personal property necessary and proper for its corporate purposes, and to bargain, sell, grant, alien, or dispose of all such real and personal property as it may lawfully acquire. All such property owned or acquired by said body politic and corporate shall be exempt from all taxes imposed by the State or any political subdivision thereof, and shall not be subject to income taxes.

(b) Membership of Board; Terms.—The board shall consist of eight members, as follows:

- (1) The State Treasurer, ex officio;
- (2) The Superintendent of Public Instruction, ex officio;
- (3) Six members to be appointed by the Governor and confirmed by the Senate of North Carolina. One of the appointive members shall be a member of the teaching profession of the State; one of the appointive members shall be an employee of the State Highway Commission, who shall be appointed by the Governor for a term of four years commencing April 1st, 1947 and quadrennially thereafter; one to be a general State employee, and three who are not members of the teaching profession

or State employees; two to be appointed for a term of two years, two for a term of three years and one for a term of four years. At the expiration of these terms of office the appointment shall be for a term of four years.

(c) Compensation of Trustees.—The trustees shall be paid seven dollars (\$7.00) per day during sessions of the board and shall be reimbursed from the expense appropriation for all necessary expenses that they may incur through service on the board.

(d) Oath.—Each trustee other than the ex officio members shall, within ten days after his appointment, take an oath of office, that, so far as it devolves upon him, he will diligently and honestly administer the affairs of the said board, and that he will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the Retirement System. Such oath shall be subscribed to by the member making it, and certified by the officer before whom it is taken, and immediately filed in the office of the Secretary of State.

(e) Voting Rights.—Each trustee shall be entitled to one vote in the board. Four affirmative votes shall be necessary for a decision by the trustees at any meeting of said board.

(f) Rules and Regulations.—Subject to the limitations of this chapter, the board of trustees shall, from time to time, establish rules and regulations for the administration of the funds created by this chapter and for the transaction of its business. The board of trustees shall also, from time to time, in its discretion, adopt rules and regulations to prevent injustices and inequalities which might otherwise arise in the administration of this chapter.

(g) Officers and Other Employees; Salaries and Expenses.—The State Treasurer shall be ex officio chairman of the board of trustees. The board of trustees shall, by a majority vote of all the members, appoint a secretary, who may be, but need not be, one of its members. The salary of the secretary shall be fixed by the Governor subject to the approval of the Advisory Budget Commission. The board of trustees shall engage such actuarial and other service as shall be required to transact the business of the Retirement System. The compensation of all persons, other than the secretary, engaged by the board of trustees, and all other expenses of the board necessary for the operation of the Retirement System, shall be paid at such rates and in such amounts as the board of trustees shall approve, subject to the approval of the Director of the Budget.

(h) Actuarial Data.—The board of trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the Retirement System, and for checking the experience of the System.

(i) Record of Proceedings; Annual Report.—The board of trustees shall keep a record of all of its proceedings which shall be open to public inspection. It shall publish annually a report showing the fiscal transactions of the Retirement System for the preceding year, the amount of the accumulated cash and securities of the System, and the last balance sheet showing the financial condition of the System by means of an actuarial valuation of the assets and liabilities of the Retirement System.

(j) Legal Adviser.—The Attorney General shall be the legal adviser of the board of trustees.

(k) Medical Board.—The board of trustees shall designate a medical board to be composed of three physicians not eligible to participate in the Retirement System. If required, other physicians may be employed to report on special cases. The medical board shall arrange for and pass upon all medical examinations required under the provisions of this chapter, and shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the board of trustees its conclusion and recommendations upon all the matters referred to it.

(l) Duties of Actuary.—The board of trustees shall designate an actuary who

shall be the technical adviser of the board of trustees on matters regarding the operation of the funds created by the provisions of this chapter and shall perform such other duties as are required in connection therewith.

(m) Immediately after the establishment of the Retirement System the actuary shall make such investigation of the mortality, service and compensation experience of the members of the System as he shall recommend and the board of trustees shall authorize, and on the basis of such investigation he shall recommend for adoption by the board of trustees such tables and such rates as are required in subsection (n), subdivisions (1) and (2), of this section. The board of trustees shall adopt tables and certify rates, and as soon as practicable thereafter the actuary shall make a valuation based on such tables and rates of the assets and liabilities of the funds created by this chapter.

(n) In the year one thousand nine hundred and forty-three, and at least once in each five-year period thereafter, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the Retirement System, and shall make a valuation of the assets and liabilities of the funds of the System, and taking into account the result of such investigation and valuation, the board of trustees shall:

- (1) Adopt for the Retirement System such mortality, service and other tables as shall be deemed necessary; and
- (2) Certify the rates of contributions payable by the State of North Carolina on account of new entrants at various ages.

(o) On the basis of such tables as the board of trustees shall adopt, the actuary shall make an annual valuation of the assets and liabilities of the funds of the System created by this chapter. (1941, c. 25, s. 6; 1943, c. 719; 1947, c. 259; 1957, c. 541, s. 15.)

Editor's Note.—The 1943 amendment added the second sentence of subsection (f).

The 1947 amendment made changes in subsection (b). It increased the membership of the board from seven to eight and the appointive members from five to six. It also inserted a provision requiring one of the appointive members to be an employee

of the State Highway and Public Works Commission, which by virtue of § 136-1.1 has been changed to "State Highway Commission."

The 1957 amendment changed subsection (g) by inserting the third sentence and the words "other than the secretary" in the fifth sentence.

§ 135-7. Management of funds.—(a) Management and Investment of Funds.—The board of trustees shall be the trustee of the several funds created by this chapter as provided in G. S. 135-8, and shall have full power to invest and reinvest such funds in any of the following:

- (1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;
- (2) Obligations of the Federal Intermediate Credit Banks, Federal Home Loan Banks, Federal National Mortgage Association, Banks for Co-operatives, and Federal Lands Banks;
- (3) Obligations of the State of North Carolina;
- (4) General obligations of other states of the United States;
- (5) General obligations of cities, counties and special districts in North Carolina;
- (6) Obligations of any corporation within the United States if such obligations bear either of the three highest ratings of at least two nationally recognized rating services; and
- (7) Notes secured by mortgages on real estate located within the State of North Carolina and insured by the Federal Housing Commissioner, or his successor or assigns, or in debentures issued by such Commissioner, which are guaranteed as to principal and interest by the United States or by the Federal Housing Administration, an agency of the United States Government, or by some other agency of the United States Government.

- (8) Shares of any building and loan association organized under the laws of this State or of any federal savings and loan association having its principal office in this State, to the extent that such investment is insured by the federal government or an agency thereof.

Subject to the limitations set forth above, said trustees shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and any moneys belonging to said funds.

(b) Regular Interest Allowance.—The board of trustees annually shall allow regular interest on the mean amount for the preceding year in each of the funds with the exception of the expense fund. The amounts so allowed shall be due and payable to said funds, and shall be annually credited thereto by the board of trustees from interest and other earnings on the moneys of the Retirement System. Any additional amount required to meet the interest on the funds of the Retirement System shall be paid from the pension accumulation fund, and any excess of earnings over such amount required shall be paid to the pension accumulation fund. Regular interest shall mean such per centum rate to be compounded annually as shall be determined by the board of trustees on the basis of the interest earnings of the System for the preceding year and of the probable earnings to be made, in the judgment of the board, during the immediate future, such rate to be limited to a minimum of three per centum and a maximum of four per centum, with the latter rate applicable during the first year of operation of the Retirement System.

(c) Custodian of Funds; Disbursements; Bond of Secretary.—The State Treasurer shall be the custodian of the several funds. All payments from said funds shall be made by him only upon vouchers signed by two persons designated by the board of trustees. The secretary of the board of trustees shall furnish said board a surety bond in a company authorized to do business in North Carolina in such an amount as shall be required by the board, the premium to be paid from the expense fund.

(d) Deposits to Meet Disbursements.—For the purpose of meeting disbursements for pensions, annuities and other payments there may be kept available cash, not exceeding ten per centum of the total amount in the several funds of the Retirement System, on deposit with the State Treasurer of North Carolina.

(e) Personal Profit or Acting as Surety Prohibited.—Except as otherwise herein provided, no trustee and no employee of the board of trustees shall have any direct interest in the gains or profits of any investment made by the board of trustees, nor as such receive any pay or emolument for his service. No trustee or employee of the board shall, directly or indirectly, for himself or as an agent in any manner use the same, except to make such current and necessary payments as are authorized by the board of trustees; nor shall any trustee or employee of the board of trustees become an endorser or surety or in any manner an obligor for moneys loaned or borrowed from the board of trustees. (1941, c. 25, s. 7; 1957, c. 846, s. 2; 1959, c. 1181, s. 2; 1961, c. 397.)

Editor's Note.—The 1957 amendment rewrote subsection (a).

The 1959 amendment added subdivision (8) of subsection (a).

The 1961 amendment changed subsection (a) by substituting "three" for "two" near the middle of subdivision (6) and rewriting subdivision (7).

§ 135-7.1. Purchase of notes obtained from loans made from State Literary Fund.—The State Board of Education is hereby authorized, in its discretion, to sell notes, obtained from loans made from the State Literary Fund, to the board of trustees of the Teachers' and State Employees' Retirement System of North Carolina. The board of trustees of the Teachers' and State Employees' Retirement System of North Carolina is hereby authorized, in its discretion, to purchase from the State Board of Education notes obtained by said board from loans made from the State Literary Fund. (1943, c. 603.)

§ 135-7.2. Authority to invest in certain common and preferred stocks.—In

addition to all other powers of investment, the board of trustees, within the limitations set forth in this section, is also authorized to invest Retirement System funds in stocks, preferred or common, issued or guaranteed by a corporation created or existing under the laws of the United States or any state, district, or territory thereof, provided:

- (1) That for a period of five fiscal years for which the necessary statistical data are available next preceding the date of investment, such corporation as disclosed by its published fiscal annual statements shall have had an average annual net income plus its average annual fixed charges (as herein used, fixed charges shall mean interest on funded or unfunded debt, contingent interest charges, amortization of debt discount and expense and rentals for leased property and, in the case of consolidated earnings statements of parent and subsidiary corporations shall include all fixed charges and preferred dividend requirement, if any, of the subsidiaries) at least equal to one and one-half times the sum of its average annual dividend requirement for preferred stock and its average annual fixed charges for the same period; however, during neither of the last two years of such period shall the sum of its annual net income and its annual fixed charges have been less than one and one-half times the sum of its dividend requirements for preferred stock and its fixed charges for the same period;
- (2) That such corporation shall have no arrears of dividends on its preferred stock;
- (3) That such common stock is registered on a national securities exchange as provided in the Federal Securities Exchange Act, but such registration shall not be required of the following stocks:
 - a. The common stock of a bank which is a member of Federal Deposit Insurance Corporation and has capital funds, represented by capital, surplus and undivided profits, of at least twenty million dollars (\$20,000,000.00);
 - b. The common stock of a life insurance company which has capital funds represented by capital, special surplus funds and unassigned surplus, of at least fifty million dollars (\$50,000,000.00);
 - c. The common stock of a fire or casualty insurance company, or a combination thereof, which has capital funds represented by capital, net surplus and voluntary reserves, of at least fifty million dollars (\$50,000,000.00);
- (4) That the preferred stock of such corporation, if any be outstanding, shall qualify for investment under this section;
- (5) That such corporation, having no preferred stock outstanding, shall have had earnings for the five fiscal years next preceding the date of investment of at least twice the interest on all mortgages, bonds, debentures, and funded debts, if any, after deduction of the proper charges for replacements, depreciation, and obsolescence;
- (6) That such corporation shall have paid a cash dividend on its common stock in each year of the ten-year period next preceding the date of investment and the aggregate net earnings available for dividends on the common stock of such corporation for the whole of such period shall have been at least equal to the amount of such dividends paid;
- (7) That in applying the earnings test under this section to any issuing, assuming, or guaranteeing corporation, where such corporation shall have acquired its property or any substantial part thereof within a five-year period immediately preceding the date of investment by consolidation, merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, or shall have acquired the assets of any unincorporated business enterprise by pur-

chase or otherwise, net income, fixed charges and preferred dividends of the several predecessor or constituent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or not the applicable requirements of this section have been complied with;

- (8) That the total value of common and preferred stocks shall not exceed ten per centum of the total value of all invested funds of the Retirement System; provided, further:
- a. Not more than one and one-half per centum of the total value of such funds shall be invested in the stock of a single corporation, and provided further;
 - b. The total number of shares in a single corporation shall not exceed eight per centum of the issued and outstanding stock of such corporation, and provided further;
 - c. Not more than one and one-half per centum of the total value of such funds shall be invested in stocks during any year;
 - d. As used in this subdivision (8), value shall consist of the par value or unpaid balance of all unmatured or unpaid investments requiring the payment of a fixed amount at payment date and the cost price of all other investments.

In order to carry out the duties and exercise the powers imposed and granted by this section, the chairman of the board of trustees is authorized to appoint an investment committee consisting of five members, three of whom shall be members of the board of trustees designated ex officio by the chairman and two of whom shall not be members of the board. Such investment committee shall have such powers and duties as the board of trustees may prescribe. The members of the investment committee shall receive for their services the same per diem and other allowances as are granted the members of State boards and commissions generally. (1961, c. 626.)

Editor's Note.—The act inserting this section is effective as of July 1, 1961.

§ 135-8. Method of financing.—(a) Funds to Which Assets of Retirement System Credited.—All of the assets of the Retirement System shall be credited according to the purpose for which they are held to one of four funds, namely, the annuity savings fund, the annuity reserve fund, the pension accumulation fund, and the pension reserve fund.

(b) Annuity Savings Fund.—The annuity savings fund shall be a fund in which shall be accumulated contributions from the compensation of members to provide for their annuities. Contributions to and payments from the annuity savings fund shall be made as follows:

- (1) Prior to the first day of July, 1947, each employer shall cause to be deducted from the salary of each member on each and every payroll of such employer for each and every payroll period four per centum (4%) of his actual compensation; and the employer also shall deduct four per centum (4%) of any compensation received by any member for teaching in public schools, or in any of the institutions, agencies or departments of the State from salaries other than the appropriations from the State of North Carolina. On and after such date the rate so deducted shall be five per centum (5%) of actual compensation except that, with respect to each member who is eligible for coverage under the Social Security Act in accordance with the agreement entered into during 1955 in accordance with the provisions of article 2 of chapter 135 of Volume 3B of the General Statutes, as amended, such deduction shall, commencing with the first day of the period of service with respect to which such agreement is effective, be at the rate of three per centum (3%) of the part of his actual compensation not in excess of the amount taxable to him under the Federal Insurance Contributions Act as from time to

time in effect plus five per centum (5%) of the part of his earnable compensation not so taxable; provided that in the case of any member so eligible and receiving compensation from two or more employers such deductions may be adjusted under such rules as the board of trustees may establish so as to be as nearly equivalent as practicable to the deductions which would have been made had the member received all of such compensation from one employer. Notwithstanding the foregoing, the board of trustees may in its discretion cause such portion as it may determine of deductions made between January 1, 1955 and December 1, 1955, to be transferred into the contribution fund established under G. S. 135-24; such amounts so transferred shall in that event be deemed to be taxes contributed by employees as required under article 2, chapter 135 of Volume 3B of the General Statutes as amended, and shall be in lieu of contributions otherwise payable in the same amount as so required.

Notwithstanding the foregoing, effective July 1, 1963, the rates of such deductions shall be four per centum (4%) of the portion of compensation not in excess of the Social Security break-point, and six per centum (6%) of the portion in excess of such break-point. Such rates shall apply uniformly to all members of the Retirement System, without regard to their coverage under the Social Security Act.

- (2) The deductions provided for herein shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein and shall receipt for his full salary or compensation, and payment of salary or compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided under this chapter. The employer shall certify to the board of trustees on each and every payroll or in such other manner as the board of trustees may prescribe, the amounts to be deducted; and each of said amounts shall be deducted, and when deducted shall be paid into said annuity savings fund, and shall be credited, together with regular interest thereon to the individual account of the member from whose compensation said deduction was made.
- (3) Each board of education of each county and each board of education of each city, and the employer in any department, agency or institution of the State, in which any teacher receives compensation from sources other than appropriations of the State of North Carolina shall deduct from the salaries of these teachers paid from sources other than State appropriations an amount equal to that deducted from the salaries of the teachers whose salaries are paid from State funds, and remit this amount to the State Retirement System. City boards of education and county boards of education in each and every county and city which has employees compensated from other than the State appropriation shall pay to the State Retirement System the same per centum of the salaries that the State of North Carolina pays and shall transmit same to the State Retirement System monthly: Provided, that for the purpose of enabling the county boards of education and the board of trustees of city administrative units to make such payment, the tax levying authorities in each such city or county administrative unit are hereby authorized, empowered and directed to provide the necessary funds therefor: Provided, that it shall be within the discretion of the county board of education in a county administrative unit and the board of trustees in a city administrative unit, with the approval of the tax

levying authorities of such unit, to provide for the payment from local tax funds of any amount specified in subsection (b) (3) of this section in excess of the amount to be paid to the Retirement System on the basis of the State salary schedule and term. In case the salary is paid in part from State funds and in part from local funds, the local authorities shall not be relieved of providing and remitting the same per centum of the salary paid from local funds as is paid from State funds. In case the entire salary of any teacher, as defined in this chapter, is paid from county or local funds, the county or city paying such salary shall provide and remit to the Retirement System the same per centum that would be required if the salary were provided by the State of North Carolina.

- (4) In addition to contributions deducted from compensation as hereinbefore provided, subject to the approval of the board of trustees, any member may redeposit in the annuity savings fund by a single payment an amount equal to the total amount which he previously withdrew therefrom, as provided in this chapter. Such amounts so redeposited shall become a part of his accumulated contributions as if such amounts had initially been contributed within the calendar year of such redeposit. In no event, however, shall any member be permitted to redeposit any amount withdrawn after July 1, 1959.
- (5) Subject to the approval of the board of trustees, any member who is granted by his employer a leave of absence for the sole purpose of acquiring knowledge, talents, or abilities which are, in the opinion of the employer, expected to increase the efficiency of the services of the member to his or her employer, may make monthly contributions to the Retirement System on the basis of the salary or wage such member was receiving at the time such leave of absence was granted.
- (6) The contributions of a member, and such interest as may be allowed thereon, paid upon his death or withdrawn by him as provided in this chapter, shall be paid from the annuity savings fund, and any balance of the accumulated contributions of such a member shall be transferred to the pension accumulation fund.

(c) Annuity Reserve Fund.—The annuity reserve fund shall be the fund in which shall be held the reserves on all annuities in force and from which shall be paid all annuities and all benefits in lieu of annuities, payable as provided in this chapter. Should a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

(d) Pension Accumulation Fund.—The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contribution made by employers and from which shall be paid all pensions and other benefits on account of members with prior service credit. Contributions to and payments from the pension accumulation fund shall be made as follows:

- (1) On account of each member there shall be paid annually in the pension accumulation fund by employers for the preceding fiscal year an amount equal to a certain percentage of the actual compensation of each member to be known as the "normal contribution," and an additional amount equal to a percentage of his actual compensation to be known as the "accrued liability contribution." The rate per centum of such contributions shall be fixed on the basis of the liabilities of the Retirement System as shown by actuarial valuation. Until the first valuation the normal contribution shall be two and fifty-seven one-hundredths per centum (2.57%) for teachers, and one and fifty-seven one-hundredths per centum (1.57%) for State employees, and the accrued liability contri-

bution shall be two and ninety-four one-hundredths per centum (2.94%) for teachers and one and fifty-nine one-hundredths per centum (1.59%) of the salary of other State employees.

- (2) On the basis of regular interest and of such mortality and other tables as shall be adopted by the board of trustees, the actuary engaged by the board to make each valuation required by this chapter during the period over which the accrued liability contribution is payable, immediately after making such valuation, shall determine the uniform and constant percentage of the earnable compensation of the average new entrant throughout his entire period of active service which would be sufficient to provide for the payment of any pension payable on his account. The rate per centum so determined shall be known as the "normal contribution" rate. After the accrued liability contribution has ceased to be payable, the normal contribution rate shall be the rate per centum of the earnable salary of all members obtained by deducting from the total liabilities of the pension accumulation fund the amount of the funds in hand to the credit of that fund and dividing the remainder by one per centum of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the board of trustees and regular interest. The normal rate of contribution shall be determined by the actuary after each valuation.
- (3) Immediately succeeding the first valuation the actuary engaged by the board of trustees shall compute the rate per centum of the total annual compensation of all members which is equivalent to four per centum (4%) of the amount of the total pension liability on account of all members and beneficiaries which is not dischargeable by the aforesaid normal contribution made on account of such members during the remainder of their active service. The rate per centum originally so determined shall be known as the "accrued liability contribution" rate. Such rate shall be increased on the basis of subsequent valuations if benefits are increased over those included in the valuation on the basis of which the original accrued liability contribution rate was determined. Upon certification by the actuary engaged by the board of trustees that the accrued liability contribution rate may be reduced without impairing the Retirement System, the board of trustees may cause the accrued liability contribution rate to be reduced.
- (4) The total amount payable in each year to the pension accumulation fund shall not be less than the sum of the rate per centum known as the normal contribution rate and the accrued liability contribution rate of the total actual compensation of all members during the preceding year: Provided, however, that, subject to the provisions of subdivision (3) of this subsection the amount of each annual accrued liability contribution shall be at least three per centum (3%) greater than the preceding annual accrued liability payment, and that the aggregate payment by employers shall be sufficient, when combined with the amount in the fund, to provide the pensions and other benefits payable out of the fund during the year then current.
- (5) The accrued liability contribution shall be discontinued as soon as the accumulated reserve in the pension accumulation fund shall equal the present value as actuarially computed and approved by the board of trustees, of the total liability of such fund less the present value, computed on the basis of the normal contribution rate then in force, of the prospective normal contributions to be received on account of all persons who are at the time members.
- (6) All pensions, and benefits in lieu thereof, with the exception of those payable on account of members who received no prior service allowance,

payable from contributions of employer shall be paid from the pension accumulation fund.

- (7) Upon the retirement of a member not entitled to credit for prior service, an amount equal to his pension reserve shall be transferred from the pension accumulation fund to the pension reserve fund.

(e) Pension Reserve Fund.—The pension reserve fund shall be the fund in which shall be held the reserves on all pensions granted to members not entitled to credit for prior service and from which such pensions and benefits in lieu thereof shall be paid. Should such a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement, the pension thereon shall be transferred from the pension reserve fund to the pension accumulation fund. Should the pension of such disability beneficiary be reduced as a result of an increase in his earning capacity, the amount of the annual reduction in his pension shall be paid annually into the pension accumulation fund during the period of such reduction.

(f) Collection of Contributions.

- (1) The collection of members' contributions shall be as follows:

a. Each employer shall cause to be deducted on each and every payroll of a member for each and every payroll subsequent to the date of establishment of the Retirement System the contributions payable by such member as provided in this chapter, and the employer shall draw his warrant for the amount so deducted, payable to the Teachers' and State Employees' Retirement System of North Carolina, and shall transmit the same, together with schedule of the contributions, on such forms as prescribed.

- (2) The collection of employers' contributions shall be made as follows:

a. Upon the basis of each actuarial valuation provided herein the board of trustees shall annually prepare and certify to the budget bureau a statement of the total amount necessary for the ensuing fiscal year to the pension accumulation and expense funds, as provided under subsections (d) and (f) of this section, and these funds shall be handled and disbursed in accordance with chapter one hundred, Public Laws of one thousand nine hundred and twenty-nine, and amendments thereto [§ 143-1 et seq.], known as The Executive Budget Act.

b. Until the first valuation has been made and the rates computed as provided in subsection (d) of this section, the amount payable by employers on account of the normal and accrued liability contributions shall be five and fifty-one one-hundredths per centum (5.51%) of the payroll of all teachers and three and sixteen one-hundredths per centum (3.16%) for other State employees.

c. The auditor shall issue his warrant to the State Treasurer directing the State Treasurer to pay this sum to the board of trustees, from the appropriations for the Teachers' and State Employees' Retirement System.

d. Each board of education in each county and each board of education in each city in which teachers or other employees of the schools receive compensation for services in the public schools from sources other than the appropriation of the State of North Carolina shall pay the board of trustees of the State Retirement System such rate of their respective salaries as are paid those of other employees.

e. Each employer shall transmit monthly to the State Retirement System on account of each employee, who is a member of this System, an amount sufficient to cover the normal contribution and the accrued liability contribution of each member employed by such employer for the preceding month.

(g) Merger of Annuity Reserve Fund and Pension Reserve Fund into Pension Accumulation Fund.—Notwithstanding the foregoing, effective at such date not later than December 31, 1959, as the board of trustees may determine, the Annuity Reserve Fund and the Pension Reserve Fund shall be merged into and become a part of the Pension Accumulation Fund, provided that such merger shall in no way adversely affect the rights of any members or retired members of the System and further provided the board of trustees shall be and hereby is authorized to make such changes in the accounting methods and procedures of the System from time to time as, in its opinion, are in the interest of sound and proper administration of the System.

(h) Further Contributions by Employees.—Effective July 1, 1963, in addition to the contributions hereinbefore provided, subject to such conditions as may be established by the board of trustees, any member may, in accordance with a contract with his employer, have further contributions at a fixed percentage of his compensation made on his account by a deduction from his compensation. Interest at such rates as may be set from time to time by the board of trustees shall be allowed on such contributions and shall be used in determining the benefits payable from such contributions. Upon retirement such additional amounts, including interest, shall be treated as excess contributions returnable to the member in cash or as an additional annuity of equivalent actuarial value, on the basis of such mortality tables as the board of trustees may from time to time adopt for this purpose. In all other respects, such additional amounts so deposited shall be treated in the same manner as the member's accumulated contributions. The contributions and interest credits of a member withdrawn by him, or paid to his estate or to his designated beneficiary in event of his death, shall be paid from the annuity savings fund. Upon the retirement of a member his accumulated contributions shall be transferred from the annuity savings fund to the pension accumulation fund. (1941, c. 25, s. 8; c. 143; 1943, c. 207; 1947, c. 458, ss. 1, 2, 8; 1955, c. 1155, ss. 3-5; 1959, c. 513, s. 4; 1963, c. 687, ss. 4, 5.)

Editor's Note.—The 1943 amendment inserted in the second sentence of subdivision (3) of subsection (b) the words "and shall transmit same to the State Retirement System monthly." It also inserted subdivision (5) of said subsection and added paragraph e at the end of subsection (e).

The 1947 amendment rewrote subdivision (1) of subsection (b) and added subdivision (6) thereto. It also added the third sentence to subdivision (3) of subsection (d).

The 1955 amendment rewrote subdivision (1) of subsection (b) and subdivisions (3) and (4) of subsection (d).

The 1959 amendment inserted the word "actual" in lieu of the word "earnable" at three places in subdivision (1) of subsection (b) and deleted the former last sentence thereof. The amendment rewrote subdivisions (4) and (5) of subsection (b),

inserted "actual" in lieu of "earnable" at two places in subdivision (1) of subsection (d) and inserted "total actual compensation of" in lieu of "total compensation earned by" in subdivision (4) of subsection (d). The amendment also added subsection (g).

The 1963 amendment, effective July 1, 1963, added the last paragraph of subdivision (1) of subsection (b). It also added subsection (h).

Local Unit Contribution.—Where a local unit assumes the burden of supplementing State support for the schools, the provision of subsection (b) (3) of this section that the local unit make its contribution and the taxing authority provide the necessary funds is mandatory. *Bridges v. Charlotte*, 221 N. C. 472, 20 S. E. (2d) 825 (1942), holding no vote necessary to tax to meet deficiency in previously authorized tax.

§ 135-9. Exemption from taxes, garnishment, attachment, etc.—The right of a person to a pension, or annuity, or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the various funds created by this chapter, are hereby exempt from any State or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this chapter specifically otherwise provided. (1941, c. 25, s. 9.)

Editor's Note.—For comment on this enactment, see 19 N. C. Law Rev. 519.

§ 135-10. Protection against fraud.—Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of this Retirement System in any attempt to defraud such System as a result of such act shall be guilty of a misdemeanor, and on conviction thereof by any court of competent jurisdiction, shall be punished by a fine not exceeding five hundred dollars (\$500.00), or imprisonment in the county jail not exceeding twelve months, or both such fine and imprisonment at the discretion of the court. Should any change or error in the records result in any member or beneficiary receiving from the Retirement System more or less than he would have been entitled to receive had the records been correct, the board of trustees shall correct such error, and as far as practicable, shall adjust the payment in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. (1941, c. 25, s. 10.)

§ 135-11. Application of other pension laws.—Subject to the provisions of article 2, chapter 135 of the General Statutes, Volume 3B, as amended, no other provisions of law in any other statute which provides wholly or partly at the expense of the State of North Carolina for pensions or retirement benefits for teachers or State employees of the said State, their widows, or other dependents shall apply to members or beneficiaries of the Retirement System established by this chapter, their widows or other dependents. (1941, c. 25, s. 11; 1955, c. 1155, s. 6.)

Editor's Note.—The 1955 amendment added at the beginning of this section the clause relating to article 2.

§ 135-12. Obligation of maintaining reserves and paying benefits.—The maintenance of the annuity reserves and pension reserves as provided for and regular interest creditable to the various funds as provided in § 135-8, and the payment of all pensions, annuities, retirement allowances, refunds and other benefits granted under the provisions of this chapter, are hereby made obligations of the pension accumulation fund. All income, interest and dividends derived from deposits and investments authorized by this chapter shall be used for the payment of the said obligations of the said fund. (1941, c. 25, s. 12.)

§ 135-13. Certain laws not repealed; suspension of payments and compulsory retirement.—Nothing in this chapter shall be construed to repeal or invalidate any of the provisions of chapter four hundred and eighty-three of the Public-Local Laws of one thousand nine hundred and nineteen, or chapter three hundred and eighty-five of the Public-Local Laws of one thousand nine hundred and twenty-one, as amended, relating to pensions for school teachers in New Hanover County. No payment on account of any benefit granted under the provisions of § 135-5, subsections (a)-(d) inclusive, shall become effective or begin to accrue until the end of one year following the date the System is established nor shall any compulsory retirement be made during such period. (1941, c. 25, s. 13.)

§ 135-14. Pensions of certain teachers and State employees.—Any person who was a teacher or employee of North Carolina, as defined in G. S. 135-1, for a total of twenty (20) or more years, whose separation from service as a teacher or employee prior to April 1, 1956, was not due to any dishonorable cause, and who was sixty-five (65) years of age on August 1, 1959, or by reason of physical disability unable to work on that date, shall from and after July 1, 1959, be paid a benefit of seventy dollars (\$70.00) per month. To the extent that such payment is authorized on account of separation from service prior to July 1, 1941, the effective date of the act establishing the Teachers' and State Employees' Retirement System, such payment shall be payable from funds appropriated from the general fund of the State as provided by paragraph two (2) of this section. To the extent that such payment is authorized on account of separation from service subsequent to July 1, 1941, such payment shall be payable from the Annuity Savings Fund

and the Pension Accumulation Fund. This section shall apply only to a former teacher or employee who was a resident of North Carolina on August 1, 1959, or on the date of application for benefits pursuant to this section.

There is hereby appropriated from the General Fund of the State for each fiscal year such sum or sums as may be necessary to carry out the provisions of this section: Provided, further, that such benefits shall be payable only in the event that such applicant has not become eligible to receive federal old age and survivors insurance benefits as a result of the coordination of the Teachers' and State Employees' Retirement System with social security coverage pursuant to article 2 of chapter 135 of the General Statutes.

This section shall be administered by the board of trustees of Teachers' and State Employees' Retirement System of North Carolina created under the provisions of G. S. 135-2 and the provisions of this chapter shall be controlling in the administration of this section in all respects or provisions except as they may be modified by this section for the purposes of this section. (1943, c. 785; 1953, c. 1132, s. 1; 1955, c. 1199, ss. 1, 2; 1957, cc. 852, 1408, 1412; 1959, c. 538, s. 1.)

Editor's Note.—The 1953 and 1955 amendments made changes in the first paragraph.

The third 1957 amendment rewrote the first paragraph as changed by the first and second 1957 amendments, and made it applicable to State employees as well as to State teachers. The amendment also added the proviso to the second paragraph.

The 1959 amendment rewrote the first paragraph of this section. Section 2 of the 1959 amendatory act provides that the enactment of section 1 shall not be construed to cause any reduction in benefits payable to any person pursuant to the provisions of G. S. 135-14 as provided prior to July 1, 1959.

§ 135-14.1. Certain school superintendents and assistant superintendents.—Any person who has been a superintendent or assistant superintendent in the public schools of North Carolina for a total of twenty years or more and who was not a superintendent or assistant superintendent in the public schools of this State at the time of the enactment of the Teachers' and State Employees' Retirement System Act, the same being this chapter, and whose cessation of employment as a superintendent or assistant superintendent was not due to any dishonorable cause shall be entitled to receive benefits under said Retirement Act for such services in the same manner and to the same extent as such twenty years of prior service would have entitled such superintendent or assistant superintendent had he or she been a superintendent or assistant superintendent in the public schools at the time said Retirement Act became effective, and had chosen to become a member of the Retirement System, provided that such former superintendent or assistant superintendent has returned to State service and been employed for at least five years and has reached the age of sixty-five before July 1, 1957; provided, further, the monthly benefit to such former superintendent or assistant superintendent shall be equal to the minimum provided with respect to teachers under the provisions of G. S. 135-14, as amended. (1957, c. 1431.)

§ 135-15: Repealed by Session Laws 1949, c. 1056, s. 9.

§ 135-16. Employees transferred to North Carolina State Employment Service by Act of Congress.—Notwithstanding any provision contained in this chapter, any employee of the United States Employment Service who was transferred to and became employed by the State of North Carolina, or any of its agencies, on November 16th, 1946, by virtue of Public Laws 549, 79th Congress, Chapter 672, 2nd Session, and who was employed by the War Manpower Commission or the United States Employment Service between January 1st, 1942, and November 15th, 1946, shall be deemed to have been engaged in membership service as defined by this chapter for any payroll period or periods between such dates: Provided, that any such employee or member on or before January 1st, 1948, pays to the board of trustees for the benefit of the proper fund or account an amount equal to the accumulated contributions, with interest thereon, that such employee or member would

have made during such period if he had been a member of the Retirement System with earnable compensation based on the salary received for such period and as limited by this chapter: Provided, further that funds are made available by the United States Employment Service, or other federal agency, to the Employment Security Commission for the payment of and the Employment Security Commission pays to the board of trustees for the benefit of the proper fund a sum equal to the employer's contributions that would have been paid for such period for members or employees who pay the accumulated contributions provided in this section.

The board of trustees is authorized to adopt and issue all necessary rules and regulations for the purpose of administering and enforcing the provisions of this section. (1947, c. 464, s. 1; c. 598, s. 1.)

Editor's Note.—By virtue of Session Laws 1947, c. 598, s. 1, "Employment Security Commission" was substituted for "Unemployment Compensation Commission."

§ 135-17. Facility of payment.—In the event of the death of a member or beneficiary not survived by a person designated to receive any return of accumulated contributions or balance thereof, or in the event that the board of trustees shall find that a beneficiary is unable to care for his affairs because of illness or accident, any benefit payments due may, unless claim shall have been made therefor by a duly appointed guardian, committee or other legal representative, be paid to the spouse, a child, a parent or other blood relative, or to any person deemed by the board of trustees to have incurred expense for such beneficiary or deceased member, and any such payments so made shall be a complete discharge of the liabilities of this Retirement System therefor. (1949, c. 1056, s. 6.)

§ 135-18. Re-employment of retired teachers and employees.—The board of trustees of the Teachers' and State Employees' Retirement System may establish and promulgate rules and regulations governing the re-employment of retired teachers and employees. (1949, c. 1056, s. 8.)

§ 135-18.1. Transfer of credits from the North Carolina Local Governmental Employees' Retirement System.—(a) Any person who is a member of the Teachers' and State Employees' Retirement System of North Carolina on July 1, 1951, and who was previously a member of the North Carolina Governmental Employees' Retirement System, hereafter in this section referred to as the local system, shall be entitled to transfer to this Retirement System his credits for membership and prior service in the local system as of the date of termination of membership in the local system, notwithstanding that his membership in the local system may have been terminated prior to July 1, 1951: Provided, such member shall deposit in this Retirement System prior to January 1, 1952, the full amount of any accumulated contributions standing to his credit in, or previously withdrawn from, the local system and shall apply to the board of trustees of this Retirement System for a transfer of credit from the local system. Any person who becomes a member of this Retirement System after July 1, 1951, shall be entitled to transfer to this Retirement System his credits for membership and prior service in the local system as of the date of termination of membership in the local system: Provided, such person, prior to or at the date of his withdrawal from the local system shall notify the board of trustees of the local system of his intention to enter this Retirement System, and shall request a refund of the total amount of the accumulated contributions standing to his credit in the annuity savings fund of the local system, and shall deposit such contributions so refunded from the local system in this Retirement System within six months from the date of such refund, with request to the board of trustees of this System for transfer of his credits from the local system.

(b) The accumulated contributions withdrawn from the local system and deposited in this Retirement System shall be credited to such member's account in the annuity savings fund of this Retirement System and shall be deemed, for the

purpose of computing any benefits subsequently payable from the annuity savings fund, to be regular contributions made on the date of such deposit.

(c) Upon the deposit in this Retirement System of the accumulated contributions previously withdrawn from the local system the board of trustees of this Retirement System shall request the board of trustees of the local system to certify to the period of membership service credit and the regular accumulated contributions attributable thereto and to the period of prior service credit, if any, and the contributions with interest allowable as a basis for prior service benefits in the local system, as of the date of termination of membership in the local system. Credit shall be allowed in this System for the service so certified in determining the member's credited service and, upon his retirement he shall be entitled, in addition to the regular benefits allowable on account of his participation in this Retirement System, to the pension which shall be the actuarial equivalent at age sixty-five or at retirement, if prior thereto, of the amount of the credit with interest thereon representing contributions attributable to his service credits in the local system.

(d) Anything to the contrary herein notwithstanding, if a member transferring his credits to this Retirement System as herein provided retires on a retirement allowance in this Retirement System within five years after the date of such deposit, the benefits payable with respect to the service credits so transferred from the local system to this Retirement System shall not be greater than those which would have been payable with respect to such service had he remained in the local system.

(e) The board of trustees of the Retirement System shall effect such rules as it may deem necessary to prevent any duplication of service, interest or other credits which might otherwise occur. (1951, c. 797; 1961, c. 516, s. 7.)

Editor's Note.—The 1961 amendment substituted "sixty-five" for "sixty" near the end of subsection (c).

§ 135-18.2: Repealed by Session Laws 1959, c. 538, s. 3.

§ 135-18.3. **Conditions under which amendments void.**—If for any reason the Federal-State agreement provided in article 2 of chapter 135 of the General Statutes, Volume 3B, as amended, is not entered upon, or the referendum authorized therein with respect to positions covered by the Teachers' and State Employees' Retirement System of North Carolina is not held, or the conditions specified in § 218(d) (3) of the Social Security Act with respect to such referendum if held are not met, this act shall be null and void. (1955, c. 1155, s. 7.)

Editor's Note.—The act referred to in amended the following: §§ 135-1, 135-3, this section, Session Laws 1955, c. 1155, 135-5, 135-8 and 135-11.

§ 135-18.4. **Reservation of power to change.**—The General Assembly reserves the right at any time and from time to time, and if deemed necessary or appropriate by said General Assembly in order to coordinate with any changes, in the benefit and other provisions of the Social Security Act made after January 1, 1955, to modify or amend in whole or in part any or all of the provisions of the Teachers' and State Employees' Retirement System of North Carolina. (1955, c. 1155, s. 8.)

§ 135-18.5. **Provision for emergency expenses of integration of system.**—For the purpose of meeting the expenses involved in administering the provisions of this act to June 30, 1959, and in holding the referendum described herein with respect to positions covered under the Teachers' and State Employees' Retirement System of North Carolina as established by article 1 of chapter 135 of the General Statutes, Volume 3B, as amended, any funds not otherwise provided for such purpose by action of the General Assembly during the session of 1955 or 1957 may be borrowed from the Pension Accumulation Fund of such system; provided, however, that the amount so borrowed and the expenditure thereof shall be subject to the approval of the board of trustees of such system and the assistant director of

the budget, and that such amounts so borrowed shall be repaid as soon as practicable. (1955, c. 1155, s. 9; 1957, c. 855, s. 9.)

Editor's Note.—The 1957 amendment ginning of the section and inserted "or substituted "1959" for "1957" near the be- 1957" near the end.

ARTICLE 2.

Coverage of Governmental Employees under Title II of the Social Security Act.

§ 135-19. Declaration of policy.—In order to extend to employees of the State and its political subdivisions and of the instrumentalities of either, and to the dependents and survivors of such employees, the basic protection accorded to others by the old age and survivors insurance system embodied in the Social Security Act, it is hereby declared to be the policy of the legislature, subject to the limitation of this article, that such steps be taken as to provide such protection to employees of the State and local governments on as broad a basis as is permitted under applicable federal law.

It is also the policy of the legislature that the protection afforded employees in positions covered by a retirement system on the date an agreement under this act is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof. (1951, c. 562, s. 3; 1955, c. 1154, s. 1.)

Editor's Note.—The 1955 amendment added the second paragraph.

§ 135-20. Definitions.—For the purposes of this article:

- (1) The term "employee" includes an officer of the State, or one of its political subdivisions or instrumentalities, but does not include a justice of the peace or a township constable or any other judicial or law enforcement officer elected or appointed on a township basis.
- (2) The term "employment" means any service performed by an employee in the employ of the State, or any political subdivision thereof, for such employer, except
 - a. Service which in the absence of an agreement entered into under this article would constitute "employment" as defined in the Social Security Act; or
 - b. Service which under the Social Security Act may not be included in an agreement between the State and the Secretary of Health, Education and Welfare entered into under this article.

Service which under the Social Security Act may be included in an agreement only upon certification by the Governor in accordance with § 218(d) (3) of that Act shall be included in the term "employment" if and when the Governor issues, with respect to such service, a certificate to the Secretary of Health, Education and Welfare pursuant to § 135-29.
- (3) The term "Federal Insurance Contributions Act" means subchapter A of chapter 9 of the Federal Internal Revenue Code of 1939 and subchapters A and B of chapter 21 of the Federal Internal Revenue Code of 1954, as such Codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by § 1400 of such Code of 1939 and § 3101 of such Code of 1954.
- (4) The term "political subdivision" includes an instrumentality of a state, of one or more of its political subdivisions, or of a state and one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is legally separate and distinct from the state or

- subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivision.
- (5) The term "Secretary of Health, Education and Welfare" includes any individual to whom the Secretary of Health, Education and Welfare has delegated any of his functions under the Social Security Act with respect to coverage under such act of employees of states and their political subdivisions, and with respect to any action taken prior to April 11, 1953, includes the Federal Security Administrator and any individual to whom such Administrator has delegated any such function.
 - (6) The term "Social Security Act" means the Act of Congress approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the "Social Security Act," (including regulations and requirements issued pursuant thereto), as such act has been and may from time to time be amended.
 - (7) The term "State agency" means the secretary of the board of trustees of the Teachers' and State Employees' Retirement System.
 - (8) The term "wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were paid for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act. (1951, c. 562, s. 3; 1955, c. 1154, ss. 2-4, 12; 1959, c. 1020.)

Editor's Note.—The 1955 amendment substituted in the first sentence of subdivision (2) the term "Secretary of Health, Education and Welfare" for "Federal Security Administrator," and added the second sentence of the subdivision. The amendment also rewrote subdivisions (3) and (5).
The 1959 amendment added the part of subdivision (1) beginning with "but."

§ 135-21. Federal-State agreement; interstate instrumentalities.—(a) The State agency, with the approval of the Governor, is hereby authorized to enter on behalf of the State into an agreement with the Secretary of Health, Education and Welfare, consistent with the terms and provisions of this article, for the purpose of extending the benefits of the federal old age and survivors insurance system to employees of the State or any political subdivision thereof with respect to services specified in such agreement which constitute "employment" as defined in § 135-20. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the State agency and Secretary of Health, Education and Welfare shall agree upon, but, except as may be otherwise required by or under the Social Security Act as to the services to be covered, such agreement shall provide in effect that—

- (1) Benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of Title II of the Social Security Act.
- (2) The State will pay to the Secretary of the Treasury, at such time or times as may be prescribed under the Social Security Act, contributions with respect to wages (as defined in § 135-20), equal to the sum of the taxes which would be imposed by the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act.
- (3) Such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein but shall in no event cover any such services performed prior to January 1, 1951.
- (4) All services which constitute employment as defined in § 135-20 and are

performed in the employ of the State by employees of the State, shall be covered by the agreement.

- (5) All services which constitute employment as defined in § 135-20, are performed in the employ of a political subdivision of the State, and are covered by a plan which is in conformity with the terms of the agreement and has been approved by the State agency under § 135-23, shall be covered by the agreement.
- (6) As modified, the agreement shall include all services described in either subdivision (4) or subdivision (5) of this subsection and performed by individuals to whom § 218(c) (3) (C) of the Social Security Act is applicable and shall provide that the service of any such individual shall continue to be covered by the agreement in case he thereafter becomes eligible to be a member of a retirement system; and
- (7) As modified, the agreement shall include all services described in either subdivision (4) or subdivision (5) of this subsection and performed by individuals in positions covered by a retirement system with respect to which the Governor has issued a certificate to the Secretary of Health, Education and Welfare pursuant to § 135-29.

(b) Any instrumentality jointly created by this State and any other State or states is hereby authorized, upon the granting of like authority by such other state or states,

- (1) To enter into an agreement with the Secretary of Health, Education and Welfare whereby the benefits of the federal old age and survivors insurance system shall be extended to employees of such instrumentality,
- (2) To require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they would be required to pay under § 135-22 (a) if they were covered by an agreement made pursuant to subsection (a) of this section, and
- (3) To make payments to the Secretary of the Treasury in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements.

Such agreement shall, to the extent practicable, be consistent with the terms and provisions of subsection (a) and other provisions of this article.

(c) Pursuant to § 218(d) (6) of the Social Security Act, the Teachers' and State Employees' Retirement System of North Carolina as established by article 1 of chapter 135 of the General Statutes, Volume 3B, as amended and as the same may be hereafter amended, shall for the purposes of this article, be deemed to constitute a single retirement system; and, the North Carolina Local Governmental Employees' Retirement System as established by article 3 of chapter 128 of the General Statutes, Volume 3B, as amended and as the same may be hereafter amended, shall be deemed to constitute a single retirement system with respect to each political subdivision having positions covered thereby. (1951, c. 562, s. 3; 1953, c. 52; 1955, c. 1154, ss. 5-7, 12.)

Editor's Note.—The 1953 amendment re-wrote subdivision (3) of subsection (a).

The 1955 amendment substituted the term "Secretary of Health, Education and Welfare" for "Federal Security Administrator" in the preliminary paragraph of subsection (a) and also in subdivision (1)

of subsection (b). The amendment deleted "§§ 1400 and 1410 of" referring to the Federal Insurance Contributions Act in subdivision (2) of subsection (a) and added subdivisions (6) and (7) of the subsection. It also added subsection (c).

§ 135-22. Contributions by State employees.—(a) Every employee of the State whose services are covered by an agreement entered into under § 135-21 shall be required to pay for the period of such coverage, into the contribution fund established by § 135-24, contributions, with respect to wages (as defined in § 135-20), equal to the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the

meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the State, or his entry upon such service, after the enactment of this article.

(b) The contribution imposed by this section shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(c) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the State agency shall prescribe. (1951, c. 562, s. 3; 1955, c. 1154, s. 8.)

Editor's Note.—The 1955 amendment changed subsection (a) by deleting “the amount of tax which would be imposed by § 1400 of” and inserting in lieu thereof the words “the amount of the employee tax which would be imposed by.”

§ 135-23. Plans for coverage of employees of political subdivisions.—(a) Each political subdivision of the State is hereby authorized to submit for approval by the State agency a plan for extending the benefits of Title II of the Social Security Act, in conformity with applicable provisions of such act, to employees of such political subdivisions. Each such plan and any amendment thereof shall be approved by the State agency if it finds that such plan, or such plan as amended, is in conformity with such requirements as are provided in regulations of the State agency, except that no such plan shall be approved unless—

- (1) It is in conformity with the requirements of the Social Security Act and with the agreement entered into under § 135-21.
- (2) It provides that all services which constitute employment as defined in § 135-20 and are performed in the employ of the political subdivision by employees thereof, shall be covered by the plan, except that it may exclude services performed by individuals to whom § 218(c) (3) (C) of the Social Security Act is applicable.
- (3) It specifies the source or sources from which the funds necessary to make the payments required by subdivision (1) of subsection (c) and by subsection (d) are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose.
- (4) It provides for such methods of administration of the plan by the political subdivision as are found by the State agency to be necessary for the proper and efficient administration of the plan.
- (5) It provides that the political subdivision will make such reports, in such form and containing such information, as the State agency may from time to time require, and comply with such provisions as the State agency or the Secretary of Health, Education and Welfare may from time to time find necessary to assure the correctness and verification of such reports.
- (6) It authorizes the State agency to terminate the plan in its entirety, in the discretion of the State agency, if it finds that there has been a failure to comply substantially with any provision contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the State agency and may be consistent with the provisions of the Social Security Act.

(b) The State agency shall not finally refuse to approve a plan submitted by a political subdivision under subsection (a), and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to the political subdivision affected thereby.

- (c) (1) Each political subdivision as to which a plan has been approved under this section shall pay into the contribution fund, with respect to wages (as defined in § 135-20), at such time or times as the State agency may by regulation prescribe, contributions in the amounts and

at the rates specified in the applicable agreement entered into by the State agency under § 135-21.

- (2) Each political subdivision required to make payments under subdivision (1) of this subsection is authorized, in consideration of the employee's retention in, or entry upon, employment after enactment of this article, to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages (as defined in § 135-20), not exceeding the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act, and to deduct the amount of such contribution from his wages as and when paid. Contributions so collected shall be paid into the contribution fund in partial discharge of the liability of such political subdivision or instrumentality under subdivision (1) of this subsection. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

(d) Delinquent payments due under subdivision (1) of subsection (c), may, with interest at the rate of six per centum (6%) per annum, be recovered by action in the Superior Court of Wake County against the political subdivision liable therefor or may, at the request of the State agency, be deducted from any other moneys payable to such subdivision by any department or agency of the State. (1951, c. 562, s. 3; 1955, c. 1154, ss. 9, 10, 12.)

Local Modification.—Rowan, as to subdivision (2) of subsection (c): 1957, c. 408; city of Raleigh, as to subsection (c) (2): 1957, c. 4.

Editor's Note.—The 1955 amendment added the exception clause at the end of subdivision (2) of subsection (a), and sub-

stituted the term "Secretary of Health, Education and Welfare" for "Federal Security Administrator" in subdivision (5). It also changed subdivision (2) of subsection (c) by substituting "the employee tax which would be imposed by" for "tax which would be imposed by § 1400 of."

§ 135-24. Contribution fund.—(a) There is hereby established a special fund to be known as the contribution fund. Such fund shall consist of and there shall be deposited in such fund:

- (1) All contributions, interest, and penalties collected under §§ 135-22 and 135-23;
- (2) All moneys appropriated thereto under this article;
- (3) Any property or securities and earnings thereof acquired through the use of moneys belonging to the fund;
- (4) Interest earned upon any moneys in the fund; and
- (5) All sums recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other moneys received for the fund from any other source.

All moneys in the fund shall be mingled and undivided. Subject to the provisions of this article, the State agency is vested with full power, authority and jurisdiction over the fund, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this article.

(b) The contribution fund shall be established and held separate and apart from any other funds or moneys of the State and shall be used and administered exclusively for the purpose of this article. Withdrawals from such fund shall be made for, and solely for

- (1) Payment of amounts required to be paid to the Secretary of the Treasury pursuant to an agreement entered into under § 135-21;
- (2) Payment of refunds provided for in § 135-22 (c); and
- (3) Refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

(c) From the contribution fund the custodian of the fund shall pay to the

Secretary of the Treasury such amounts and at such time or times as may be directed by the State agency in accordance with any agreement entered into under § 135-21 and the Social Security Act.

(d) The treasurer of the State shall be ex officio treasurer and custodian of the contribution fund and shall administer such fund in accordance with the provisions of this article and the directions of the State agency and shall pay all warrants drawn upon it in accordance with the provisions of this section and with such regulations as the State agency may prescribe pursuant thereto.

(e) (1) There are hereby authorized to be appropriated biennially to the contribution fund, in addition to the contributions collected and paid into the contribution fund under §§ 135-22 and 135-23, to be available for the purposes of § 135-24 (b) and (c) until expended, such additional sums as are found to be necessary in order to make the payments to the Secretary of the Treasury which the State is obligated to make pursuant to an agreement entered into under § 135-21.

(2) The State agency shall submit to each regular session of the State legislature, at least ninety (90) days in advance of the beginning of such session, an estimate of the amounts authorized to be appropriated to the contribution fund by subdivision (1) of this subsection for the next appropriation period.

(f) The State agency shall have the authority to promulgate rules and regulations under which the State agency may make a reasonable charge or assessment against any political subdivision whose employees shall be included in any coverage agreement under any plan of coverage of employees as provided by the provisions of this article. Such charge or assessment shall be determined by the State agency and shall be apportioned among the various political subdivisions of government in a ratable or fair manner, and the funds derived from such charge or assessment shall be used exclusively by the State agency to defray the cost and expense of administering the provisions of this article. In case of refusal to pay such charge or assessment on the part of any political subdivision as defined in this article, or in case such charge or assessment remains unpaid for a period of thirty (30) days, the State agency may maintain a suit in the Superior Court of Wake County for the recovery of such charge or assessment. The Superior Court of Wake County is hereby vested with jurisdiction over all such suits or actions. Only such amount shall be assessed against such political subdivision as is necessary to pay its share of the expense of providing supplies, necessary employees and clerks, records and other proper expenses necessary for the administration of this article by the State agency, including compensation of the State agency for the agency's services. The funds accumulated and derived from such assessments and charges shall be deposited by the State agency in some safe and reliable depository chosen by the State agency, and the State agency shall issue such checks or vouchers as may be necessary to defray the above-mentioned expenses of administration with the right of the representative of any political subdivision to inspect the books and records and inquire into the amounts necessary for such administration. (1951, c. 562, s. 3; 1963, c. 687, s. 6.)

Editor's Note.—The 1963 amendment, the words "including compensation of the effective July 1, 1963, added at the end of State agency for the agency's services." the next-to-last sentence of subsection (f)

§ 135-25. Rules and regulations.—The State agency shall make and publish such rules and regulations, not inconsistent with the provisions of this article, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this article. (1951, c. 562, s. 3.)

§ 135-26. Studies and reports.—The State agency shall make studies concerning the problem of old age and survivors insurance protection for employees of the State and local governments and their instrumentalities and concerning the operation of agreements made and plans approved under this article and shall submit a report to the legislature at the beginning of each regular session, covering the

administration and operation of this article during the preceding biennium, including such recommendations for amendments to this article as it considers proper. (1951, c. 562, s. 3.)

§ 135-27. **Transfers from State to certain association service.**—(a) Any member whose service as a teacher or State employee is terminated because of acceptance of a position with the North Carolina Education Association, the North Carolina State Employees' Association, the North Carolina State Highway Employees Association, North Carolina Teachers' Association and the State Employees' Credit Union may elect to leave his total accumulated contributions in this retirement system during the period he is in such association employment, by filing with the board of trustees at the time of such termination the form provided by it for that purpose.

(b) Any member who files such an election shall remain a member of the retirement system during the time he is in such association employment and does not withdraw his contributions. Such a member shall be entitled to all the rights and benefits of the retirement system as though remaining in State service, on the basis of the funds accumulated for his credit at the time of such transfer plus any additional accruals on account of future contributions made as hereinafter provided. Such former State employee may restore any such account and pay into the Annuity Savings Fund before July 1, 1960, such amounts as would have been paid after transfer to such service, provided that the association makes contributions to the retirement system on behalf of such former members in accordance with subsection (c) of this section.

(c) Under such rules as the board of trustees shall adopt, the association to which the member has been transferred may agree to contribute to the retirement system on behalf of such member such current service contributions as would have been made by his employer had he remained in State service with actual compensation equal to the remuneration received from such association; provided the member continues to contribute to the retirement system. Any period of such association employment on account of which contributions are made by both the association and the member as herein provided shall be credited as membership service under the retirement system.

(d) The governing board of any association or organization listed in subsection (a), in its discretion, may elect, by an appropriate resolution of said board, to cause the employees of such association or organization to become members of the Teachers' and State Employees' Retirement System. Such Retirement System coverage shall be conditioned on such association's or organization's paying all of the employer's contributions or matching funds from funds of the association or organization and on such board's collecting from its employees the employees' contributions at such rates as may be fixed by law and by the regulations of the board of trustees of the Retirement System, all of such funds to be paid to the Retirement System and placed in the appropriate funds. Retroactive coverage of the employees of any such association or organization may also be effected to the extent that such board requests; provided, the association or organization shall pay all of the employer's contributions or matching funds necessary for such purposes; and, provided further, such association or organization shall collect from its employees all employees' contribution necessary for such purpose, computed at such rates and in such amount as the board of trustees of the Retirement System shall determine, all of such funds to be paid to the Retirement System, together with such interest as may be due, and placed in the appropriate funds. (1953, c. 1050, s. 1; 1959, c. 513, s. 5; 1961, c. 516, s. 5.)

Editor's Note.—The 1959 amendment inserted "actual" in lieu of "earnable" in added the reference to State Employees' subsection (c).
The 1961 amendment added subsection Credit Union in subsection (a), added the last sentence of subsection (b), and in- (d).

§ 135-28. **Transfer of members to employment covered by the North Carolina Local Governmental Employees' Retirement System.**—(a) Any member

whose services as a teacher or State employee are terminated for any reason other than retirement or death, who becomes employed by an employer participating in the North Carolina Local Government Employees' Retirement System or an employer which brings its employees into participation in said System within five years after such teacher or State employee has ceased to be a teacher or State employee, may elect to leave his total accumulated contributions in the Teachers' and State Employees' Retirement System during the period he is in the employment of such employer provided he files notice thereof in writing with the board of trustees of the Teachers' and State Employees' Retirement System within five years of separation from service as a teacher or State employee. This subsection shall be effective retroactively as well as prospectively.

(b) Any member who files such an election shall retain all the rights, credits and benefits obtaining to him under this Retirement System at the time of such transfer while he is a member of the local system and does not withdraw his contributions hereunder and, in addition, he shall be granted membership service credits under this Retirement System on account of the period of his membership in the local system for the purpose of increasing his years of creditable service hereunder in order to meet any service requirements of any retirement benefit under this Retirement System and, if he is a member in service under the local system, he shall be deemed to be a member in service under this Retirement System if so required by such benefit: Provided, however, that in lieu of transfer of funds from one retirement system to another, such member who is eligible for retirement benefits shall file application therefor with each retirement system to the end that such retirement system shall pay appropriate benefits without transfer of funds between the systems. (1953, c. 1050, s. 2; 1961, c. 516, s. 6.)

Editor's Note.—The 1961 amendment rewrote subsection (a) and added the proviso at the end of subsection (b).

§ 135-29. Referenda and certification.—(a) With respect to employees of the State and any other individuals covered by article 1 of chapter 135 of the General Statutes, Volume 3B, as amended and as may be hereafter amended, the Governor is empowered to authorize a referendum, and with respect to the employees of any political subdivision he shall authorize a referendum upon request of the governing body of such subdivision covered by article 3 of chapter 128 of the General Statutes, Volume 3B, as amended and as the same may be hereafter amended, or by some other retirement system established either by the State or by the political subdivision; and in either case the referendum shall be conducted, and the Governor shall designate an agency or individual to supervise its conduct, in accordance with the requirements of § 218(d) (3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the State or by a political subdivision thereof should be excluded from or included under an agreement under this article. The notice of referendum required by § 218(d) (3) (C) of the Social Security Act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or the individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this article.

(b) Upon receiving evidence satisfactory to him that with respect to any such referendum the conditions specified in § 218(d) (3) of the Social Security Act have been met, the Governor or such State official as may be designated by him, shall so certify to the Secretary of Health, Education and Welfare. (1955, c. 1154, s. 11; 1961, c. 516, s. 8.)

Editor's Note.—This section is designated in the 1955 Session Laws as § 135-27. The 1961 amendment inserted in subsection (b) the words "or such State official as may be designated by him."

§ 135-30. State employees members of Law Enforcement Officers' Benefit and Retirement Fund.—The federal-State agreement provided in G. S. 135-21 shall be revised and extended to provide that, effective on, or retroactively as of, such date as may be fixed by the Board of Commissioners of the Law Enforcement Officers' Benefit and Retirement Fund, all or some of the members of said fund who are employees of the State of North Carolina or any of its agencies, shall be covered by the Social Security Act, dependent upon a referendum or referendums held pursuant to federal laws and regulations, at the request of said Board, with the approval of the Governor: Provided, that such action shall be subject to the conditions and terms set forth in such agreement and subject to all applicable provisions of article 2 of chapter 135 of the General Statutes not inconsistent herewith: Provided, however, that the effecting of social security coverage shall not cause to be reduced or lowered the amount of the contributions to be made to the Law Enforcement Officers' Benefit and Retirement Fund by any State employee who is a member thereof nor the amount to be contributed by the State to said fund with respect to each State employee member; provided, further, from and after the date the above-described employees become subject to the Social Security Act, there shall be deducted from each such employee's salary for each and every payroll period such sum as may be necessary to pay the amount of contributions or taxes required on his account with respect to social security coverage, and the State, or the appropriate State agency, as an employer, shall pay the amount of contributions or taxes with respect to such person, as may be necessary on his account to effect the above-described social security coverage. (1959, c. 618, s. 1.)

Editor's Note.—Section 2 of the act inserting this section provides that it is not to be construed as an appropriation act and no referendum shall be held pursuant to

G. S. 135-30 unless and until the Director of the Budget determines an adequate appropriation has been made, otherwise than by the act, to carry out its purpose.

§ 135-31. Split referendums.—The provisions of this article shall be construed as authorization for the State or political subdivisions or instrumentalities of government which have not heretofore secured social security coverage, and which are otherwise authorized to secure such coverage, to hold any type of referendum with respect thereto which federal law now or hereafter may authorize, and not be restricted to the types of referendums authorized by federal law at the time of the original enactment of this article. (1959, c. 618, s. 1.)

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ARTICLE 1.*Organization of State Highway Commission.*

§ 136-1. State Highway Commission created; chairman and members; compensation; entire State represented; formulation of general policies; rules and regulations.—There is hereby created a State Highway Commission, to be composed of a chairman and eighteen members appointed by the Governor from

different geographic areas of the State. On July 1, 1961, and every four years thereafter, the Governor shall appoint a chairman and eighteen members to serve for four-year terms. The chairman or any member appointed pursuant to this section may be removed from office by the Governor for cause. In case of death, resignation, or removal from office of the chairman or a member prior to the expiration of his term of office, his successor shall be appointed by the Governor to fill out the unexpired term.

The chairman shall devote his entire time and attention to the work of the Commission, and shall be paid a salary fixed by the Governor, subject to the approval of the Advisory Budget Commission. The chairman shall be the executive officer of the Commission and shall execute all orders, rules, and regulations established by the Commission.

The commissioners shall each receive while engaged in the discharge of the duties of their office such per diem, subsistence, and necessary travel expenses as is provided by law for members of State boards and commissions generally.

It is the intent and purpose of this section that the chairman and the commissioners shall represent the entire State and not represent any particular area; provided, however, that the Governor and the chairman shall, without regard to the boundaries of engineering divisions, divide the State into geographic areas, and assign one or more commissioners to each area to be responsible for relations with the public generally and with individual citizens regarding highway matters. In addition the State Highway Commission shall from time to time provide that one or more of its members or representatives shall publicly hear any person or persons desiring to bring to their attention such highway matters as such person or persons may deem wise, in each of said geographic areas of the State.

The Commission shall formulate general policies and make such rules and regulations as it may deem necessary, governing the construction, improvement and maintenance of the roads and highways of the State, with due regard to farm-to-market roads and school bus routes. It is the intent and purpose of this section that there shall be maintained and developed a state-wide system of roads and highways commensurate with the needs of the State as a whole and not to sacrifice the general state-wide interest to the purely local desires of any particular area. (1933, c. 172, s. 2; 1937, c. 297, s. 1; 1941, c. 57, s. 1; 1945, c. 895; 1953, c. 115; 1957, c. 5, s. 1; 1961, c. 232, s. 1.)

Editor's Note.—Public Laws 1915, c. 113, s. 1, established a State Highway Commission. The function of the Commission was declared to be "to assist the counties in developing a State and county system of highways." Prior to the act of 1921 (§ 136-45 et seq.), creating a State highway system, the primary control was in the counties and political subdivisions, and the State Highway Commission served in an advisory capacity. By that act the Commission had primary control.

Public Laws 1933, c. 172, created the State Highway and Public Works Commission, which formerly controlled and managed the State prison system as well as the State highway system.

The 1957 amendment created the present State Highway Commission to have charge of the State highway system, the State prison system being now under the control and management of the State Prison Department. See § 148-1 et seq.

The 1961 amendment rewrote this section.

The State Highway Commission is a State agency or instrumentality, and as such

exercises various governmental functions, including that of supervising the construction and maintenance of State and county public roads. *C. C. T. Equipment Co. v. Hertz Corp.*, 256 N. C. 277, 123 S. E. (2d) 802 (1962).

The State Highway Commission is the State agency created for the purpose of constructing and maintaining the public highways. *Smith v. State Highway Comm.*, 257 N. C. 410, 126 S. E. (2d) 87 (1962).

Liability for Negligence of Employees.

—Prior to the enactment of the Tort Claims Act the Highway Commission, as an agency or instrumentality of the State, enjoyed immunity to liability for injury or loss caused by the negligence of its employees. Even so, then as now, an employee of such agency was personally liable for his own actionable negligence. *Wirth v. Bracey*, 258 N. C. 505, 128 S. E. (2d) 810 (1963).

Action May Be Maintained in Corporate Name.—The former State Highway and Public Works Commission, as successor to the State Prison Department, had implied power to maintain an action in its corporate name on behalf of the State. *State*

Highway, etc., *Comm. v. Cobb*, 215 N. C. 556, 2 S. E. (2d) 565 (1939).

Cited in *Moore v. Clark*, 235 N. C. 364, 70 S. E. (2d) 182 (1952); *Carolina-Virginia*

Coastal Highway v. Coastal Turnpike Authority, 237 N. C. 52, 74 S. E. (2d) 310 (1953).

§ 136-1.1. **Change of name in General Statutes.**—Wherever in the General Statutes the words “State Highway and Public Works Commission” appear, the same shall be stricken out and the words “State Highway Commission” inserted in lieu thereof. (1957, c. 65, s. 11.)

§ 136-2. **Headquarters; meetings; minutes.**—The headquarters and main office of the said Commission shall be located in Raleigh, and the Commission shall meet once in each sixty days at such regular meeting time as the Commission by rule may provide and at any place within the State as the Commission may provide and as is provided in G. S. 136-1, and may hold special meetings at any time or place within the State at the call of the chairman, or the Governor, or any three members of the Commission.

The Governor and the State Treasurer shall be privileged to attend any and all meetings of said Commission in an advisory capacity, but they shall not have the authority to vote upon any question before said Commission. The Commission shall keep minutes of all its meetings, which shall at all times be open to public inspection. (1933, c. 172, s. 2; 1937, c. 297, s. 1; 1959, c. 1191.)

Editor’s Note.—The 1959 amendment rewrote the first paragraph.

§ 136-3. **When acting chairman may be designated.**—The Commission may, with the approval of the Governor designate a member of the Commission or some other suitable person as acting chairman and confer upon the said acting chairman all authority of the chairman, or such restricted authority as the Commission may by resolution determine to be exercised, in the event the chairman, on account of absence from the State, illness, or other cause, may be unable temporarily to discharge the duties of his office. (1935, c. 257, s. 1.)

§ 136-4. **Director of Highways.**—There shall be a Director of Highways, who shall be a career official and the administrative officer of the State Highway Commission. On July 1, 1961, and every four years thereafter, the State Highway Commission shall appoint, subject to the approval of the Governor, the Director of Highways to serve for a four-year term. In case of death, resignation, or removal from office of the Director, his successor shall be appointed by the State Highway Commission, subject to the approval of the Governor, to serve the unexpired term. Subject to the approval of the Governor, the Director may be removed from office by the State Highway Commission for cause. The Director shall be paid a salary fixed by the Governor, subject to the approval of the Advisory Budget Commission.

Except as hereinafter provided, the Director shall, in accordance with the State Personnel Act, and with the approval of the State Highway Commission, appoint all subordinate officers and employees of the Highway Department, and they shall perform duties and have responsibilities as the Director may assign them.

The Director shall have such powers and perform such duties as the State Highway Commission shall prescribe. (1921, c. 2, ss. 5, 6; C. S., s. 3846(g); 1933, c. 172, s. 17; 1957, c. 65, s. 2; 1961, c. 232, s. 2.)

Editor’s Note.—The 1957 amendment rewrote this section which formerly related to the State Highway Engineer and other employees. As to Chief Engineer, see § 136-4.2.

The 1961 amendment substituted “ad-

ministrative” for “chief executive” in the first sentence and rewrote the second sentence of the first paragraph. It also inserted after “Personnel Act” in the second paragraph the words “and with the approval of the State Highway Commission.”

§ 136-4.1. **Controller.**—There shall be a Controller, who shall be the financial officer of the Highway Department. On July 1, 1961, and every four years thereafter, the State Highway Commission shall appoint, subject to the approval of the

Governor, the Controller to serve for a four-year term. In case of death, resignation, or removal from office of the Controller, his successor shall be appointed by the State Highway Commission, subject to the approval of the Governor, to serve the unexpired term. Subject to the approval of the Governor, the Controller may be removed from office by the State Highway Commission for cause. The Controller shall be paid a salary fixed by the Governor, subject to the approval of the Advisory Budget Commission.

The Controller shall, under the direction of the Director of Highways, and in accordance with the requirements of the Executive Budget Act, develop formalized procedures, budgets, internal audits, systems, and reports covering all financial phases of highway activity.

The Controller shall give a bond, to be fixed and approved by the Governor, conditioned upon the faithful discharge of the duties of his office and upon the proper accounting of all public funds coming into his possession or under his control. The premium on the bond shall be paid from the Highway Fund. (1957, c. 65, s. 3; 1961, c. 232, s. 3.)

Editor's Note.—The 1961 amendment rewrote the first paragraph. Formerly the Controller was appointed by the Director of Highways, subject to the approval of the State Highway Commission and the

Governor, and his salary was fixed by the Director subject to the approval of the Governor and the Advisory Budget Commission.

§ 136-4.2. Chief Engineer.—There shall be a Chief Engineer who shall be a career official and perform such duties and have such responsibilities as the Director shall assign him. The Chief Engineer shall be appointed by the Director, subject to the approval of the State Highway Commission, and may be removed at any time by the Director with the approval of the State Highway Commission. The Chief Engineer shall be paid a salary fixed by the Director, subject to the approval of the Governor and the Advisory Budget Commission. (1957, c. 65, s. 3.)

§ 136-4.3. Director of Secondary Roads.—There shall be a Director of Secondary Roads who shall be appointed by the State Highway Commission, subject to the approval of the Governor, and he may be removed at any time by the State Highway Commission with the approval of the Governor. The Director of Secondary Roads shall be paid a salary fixed by the Governor, subject to the approval of the Advisory Budget Commission.

The Director of Secondary Roads shall, in consultation with the commissioner assigned to the geographic area, prepare annual plans for each county providing for maintenance and construction of the secondary roads. In developing the plan, he shall follow the procedures set forth in § 136-61. (1961, c. 232, s. 4.)

§ 136-5. Oath of office of commissioners.—Before entering upon the performance of their duties, the chairman and each member of the State Highway Commission shall take and subscribe to an oath of office before some person authorized to administer oaths that they will faithfully support the Constitution of the State of North Carolina and all laws enacted pursuant thereto and not inconsistent therewith, and that they will faithfully perform the duties of their respective offices. Said oaths shall be filed and preserved by the Commission as a part of its permanent records. (1921, c. 2, s. 6; C. S., s. 3846(h); 1933, c. 172, s. 10; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment for "State Highway and Public Works substituted "State Highway Commission" Commission."

§§ 136-6 to 136-9: Repealed by Session Laws 1957, c. 65, s. 12.

§ 136-10. Annual audits; report of audit to General Assembly.—The books and accounts of the State Highway Commission shall be audited at least once a year by the State Auditor, or by a certified public accountant designated by the State Auditor. The audit shall be of a business type, and shall follow generally accepted auditing practices and procedures. The audit report shall be made a part of the

report of the State Highway Commission required under the provisions of G. S. 136-12. The cost of the audit shall be borne by the State Highway Fund. (1921, c. 2, s. 24; C. S., s. 3846(m); 1933, c. 172, s. 17; 1957, c. 65, s. 4.)

Editor's Note.—The 1957 amendment rewrote this section.

§ 136-11. Annual reports to Governor.—The State Highway Commission shall make to the Budget Bureau, or to the Governor, a full report of its finances and the physical condition of buildings, depots and properties under its supervision and control, on the first day of July of each year, and at such other times as the Governor or Directors of the Budget may call for the same. (1933, c. 172, s. 11; 1957, c. 65, s. 11; c. 349, s. 7.)

Editor's Note.—The first 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission." The second 1957 amendment deleted the words "the State's prison, prison camps, and other" formerly appearing immediately before "buildings, depots and properties."

§ 136-12. Reports to General Assembly.—The Highway Commission shall, on or before the tenth day after the convening of each regular session of the General Assembly of North Carolina, make a full printed, detailed report to the General Assembly, showing the construction and maintenance work and the cost of the same, receipts of license fees, and disbursements of the Commission, and such other data as may be of interest in connection with the work of the Commission. A full account of each road project shall be kept by and under the direction of the Commission or its representatives, to ascertain at any time the expenditures and the liabilities against all projects; also records of contracts and force account work. The account records, together with all supporting documents, shall be open at all times to the inspection of the Governor or road authorities of any county, or their authorized representatives, and copies thereof shall be furnished such officials upon request. (1921, c. 2, s. 23; C. S., s. 3846(1); 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment substituted "Highway Commission" for "Highway and Public Works Commission."

§ 136-13. Malfeasance of commissioners, employees, or contractors.—It shall be unlawful for any member or employee of the Highway Commission to knowingly or fraudulently perform any act with intent to injure the State; or for any contractor or agent or employee of a contractor to conspire with a member or employee of the Commission or with a State official to permit a violation of a contract with intent to injure the State; or for any contractor or agent or employee of any contractor to do any work on any State highway in violation of contract with intent to defraud the State. Any person violating the provisions of this section shall be guilty of a felony, and, upon conviction, shall be confined in the State prison not less than one year nor more than five years, and be liable to the State in a civil action instituted by the State on relation of the Highway Commission, for double the amount the State may have lost by reason of the violation of this section. (1921, c. 2, s. 49; C. S., s. 3846(cc); 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment substituted "Highway Commission" for "Highway and Public Works Commission."

§ 136-14. Members not eligible to other employment with Commission; no sales to Commission by employees.—No member of the Highway Commission shall be eligible to any other employment in connection with said Commission, and no member of said Commission, or any salaried employee thereof, shall furnish or sell any supplies or materials, directly or indirectly, to said Commission. (1933, c. 172, s. 10; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment substituted "Highway Commission" for "Highway and Public Works Commission."

§ 136-14.1. **Highway engineering divisions; division engineers.**—For purposes of administering the field activities of the State Highway Commission, there shall be 14 highway engineering divisions, with boundaries coterminous with the 14 divisions existing on January 1, 1957. Each division shall be under the supervision of a division engineer, who shall be appointed by the Director of Highways in accordance with the State Personnel Act. The division engineers shall perform duties and have responsibilities as the Director may assign them. (1957, c. 65, s. 5.)

§ 136-15. **Establishment of administrative districts.**—The State Highway Commission may establish such administrative districts as in their opinion shall be necessary for the proper and efficient performance of the duties of the Commission. Such districts as may be established shall be without regard to the places of residence of the members of the Commission. The Commission may from time to time change the number of such districts, or they may change the territory embraced within the several districts, when in their opinion it is in the interest of efficiency and economy to make such change. (1931, c. 145, s. 5; 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment for "State Highway and Public Works substituted "State Highway Commission" Commission."

§ 136-16. **Funds and property converted to State Highway Fund.**—Except as otherwise provided, all funds and property collected by the State Highway Commission shall be paid or converted into the State Highway Fund. (1919, c. 189, s. 8; C. S., s. 3595; 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment for "State Highway and Public Works substituted "State Highway Commission" Commission."

ARTICLE 2.

Powers and Duties of Commission.

§ 136-17. **Seal; rules and regulations.**—The State Highway Commission shall adopt a common seal and shall have the power to adopt and enforce rules and regulations for the government of its meetings and proceedings, and for the transaction of all business of the Commission, and to make all necessary rules and regulations for carrying out the intent and purposes of this chapter. The Commission shall succeed to all the rights, powers and duties heretofore vested in the State Highway Commission, and it is hereby empowered to make all necessary rules and regulations for carrying out such duties. (1933, c. 172, s. 2; 1957, c. 65, s. 11; c. 349, s. 8.)

Editor's Note.—The first 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission" in the first sentence. The second 1957 amendment deleted the words "and the State Prison Department" formerly appearing after "State Highway Commission" in the second sentence.

highway for northbound traffic from the lanes thereof for southbound traffic was and is a valid traffic regulation adopted by the Highway Commission in the exercise of the police power vested in it by this article. *Barnes v. North Carolina State Highway Comm.*, 257 N. C. 507, 126 S. E. (2d) 732 (1962).

The separation of the lanes of a relocated

§ 136-17.1. **Succeeding to powers, duties, rights, etc., of State Highway and Public Works Commission.**—Except as otherwise expressly provided in chapter 65 of the Session Laws of 1957, the State Highway Commission created by such chapter shall succeed to all the powers, duties, rights, liabilities, ownership of property, and all other interests of the State Highway and Public Works Commission as the same may be immediately prior to July 1, 1957. (1957, c. 65, s. 10.)

§ 136-18. **Powers of Commission.**—The said State Highway Commission shall be vested with the following powers:

- (1) The general supervision over all matters relating to the construction of the State highways, letting of contracts therefor, and the selection of materials to be used in the construction of State highways under the authority of this chapter.

- (2) To take over and assume exclusive control for the benefit of the State of any existing county or township roads, and to locate and acquire rights of way for any new roads that may be necessary for a State highway system, with full power to widen, relocate, change or alter the grade or location thereof and to change or relocate any existing roads that the Commission may now own or may acquire; to acquire by gift, purchase, or otherwise, any road or highway, or tract of land or other property whatsoever that may be necessary for a State highway system: Provided, all changes or alterations authorized by this subdivision shall be subject to the provisions of §§ 136-54 to 136-63, to the extent that said sections are applicable: Provided, that nothing in this chapter shall be construed to authorize or permit the Commission to allow or pay anything to any county, township, city or town, or to any board of commissioners or governing body thereof, for any existing road or part of any road heretofore constructed by any such county, township, city or town, unless a contract has already been entered into with the Commission.
- (3) To provide for such road materials as may be necessary to carry on the work of the State Highway Commission, either by gift, purchase, or condemnation: Provided, that when any person, firm or corporation owning a deposit of sand, gravel or other material, necessary, for the construction of the system of State highways provided herein, has entered into a contract to furnish the Commission any of such material, at a price to be fixed by said Commission, thereafter the Commission shall have the right to condemn the necessary right of way under the provisions of article 9 of chapter 136, to connect said deposit with any part of the system of State highways or public carrier, provided that easements to material deposits, condemned under this article shall not become a public road and the condemned easement shall be returned to the owner as soon as the deposits are exhausted or abandoned by the State Highway Commission.
- (4) To enforce by mandamus or other proper legal remedies all legal rights or causes of action of the State Highway Commission with other public bodies, corporations, or persons.
- (5) To make rules, regulations and ordinances for the use of, and to police traffic on, the State highways, and to prevent their abuse by individuals, corporations and public corporations, by trucks, tractors, trailers or other heavy or destructive vehicles or machinery, or by any other means whatsoever, and to provide ample means for the enforcement of same; and the violation of any of the rules, regulations or ordinances so prescribed by the Commission shall constitute a misdemeanor: Provided, no rules, regulations or ordinances shall be made that will conflict with any statute now in force or any ordinance of incorporated cities or towns, except the Commission may regulate parking upon any street which forms a link in the State highway system, if said street be maintained with State highway funds.
- (6) To establish a traffic census to secure information about the relative use, cost, value, importance, and necessity of roads forming a part of the State highway system, which information shall be a part of the public records of the State, and upon which information the State Highway Commission shall, after due deliberation and in accordance with these established facts, proceed to order the construction of the particular highway or highways.
- (7) To assume full and exclusive responsibility for the maintenance of all roads other than streets in towns and cities, forming a part of the State highway system from date of acquiring said roads. The State Highway Commission shall have authority to maintain all streets constructed by

the Commission in towns of less than three thousand population by the last census, and such other streets as may be constructed in towns and cities at the expense of the Commission, whenever in the opinion of the Commission it is necessary and proper so to do.

- (8) To give suitable names to State highways and change the names of any highways that shall become a part of the State system of highways.
- (9) To employ appropriate means for properly selecting, planting and protecting trees, shrubs, vines, grasses or legumes in the highway right-of-way in the promotion of erosion control, landscaping and general protection of said highways; to acquire by gift or otherwise land for and to construct, operate and maintain roadside parks, picnic areas, picnic tables, scenic overlooks and other appropriate turnouts for the safety and convenience of highway users; and to cooperate with municipal or county authorities, federal agencies, civic bodies and individuals in the furtherance of these objectives. No such roadside parks, picnic areas, picnic tables, scenic overlooks or other turnouts, or any part of the highway right-of-way shall be used for commercial purposes and every use or attempted use of any such area for commercial purposes shall constitute a misdemeanor and each day's use shall constitute a separate offense.
- (10) To make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, telegraph or other poles, signboards, fences, gas, water, sewerage, oil, or other pipe lines, and other similar obstructions that may, in the opinion of the Highway Commission, contribute to the hazard upon any of the said highways or in anywise interfere with the same, and to make reasonable rules and regulations for the proper control thereof. And whenever the order of the said Commission shall require the removal of, or changes in, the location of telephone, telegraph, or other poles, signboards, fences, gas, water, sewerage, oil, or other pipe lines, or other similar obstructions, the owners thereof shall at their own expense move or change the same to conform to the order of said Commission. Any violation of such rules and regulations or non-compliance with such orders shall constitute a misdemeanor.
- (11) To regulate, abandon and close to use, grade crossings on any road designated as part of the State highway system, and whenever a public highway has been designated as part of the State Highway system and the State Highway Commission, in order to avoid a grade crossing or crossings with a railroad or railroads, continues or constructs the said road on one side of the railroad or railroads, the Commission shall have power to abandon and close to use such grade crossings; and whenever an underpass or overhead bridge is substituted for a grade crossing, the Commission shall have power to close to use and abandon such grade crossing and any other crossing adjacent thereto.
- (12) The said State Highway Commission shall have such powers as are necessary to comply fully with the provisions of the present or future federal aid acts. The said Commission is hereby authorized to enter into all contracts and agreements with the United States government relating to the survey, construction, improvement and maintenance of roads under the provisions of the present or future congressional enactments, to submit such scheme or program of construction or improvement and maintenance as may be required by the Secretary of Agriculture or otherwise provided by federal acts, and to do all other things necessary to carry out fully the co-operation contemplated and provided for by present or future acts of Congress, for the construction or improvement and maintenance of rural post roads. The good faith and credit of the State are further hereby pledged to make available funds necessary to meet the requirements of the acts of Congress, present or future, appropriating money to

construct and improve rural post roads and apportioned to this State during each of the years for which federal funds are now or may hereafter be apportioned by the said act or acts, to maintain the roads constructed or improved with the aid of funds so appropriated and to make adequate provisions for carrying out such construction and maintenance. The good faith and credit of the State are further pledged to maintain such roads now built with federal aid and hereafter to be built and to make adequate provisions for carrying out such maintenance. Upon request of the Commission and in order to enable it to meet the requirements of acts of Congress with respect to federal aid funds apportioned to the State of North Carolina, the State Treasurer is hereby authorized, with the approval of the Governor and Council of State, to issue short term notes from time to time, and in anticipation of State highway revenue, and to be payable out of State highway revenue for such sums as may be necessary to enable the Commission to meet the requirements of said federal aid appropriations, but in no event shall the outstanding notes under the provisions of this section amount to more than two million dollars (\$2,000,000.00.)

- (13) The State Highway Commission is authorized and empowered to construct and maintain all walkways and driveways within the Mansion Square in the city of Raleigh including the approaches connecting with the city streets, and any funds expended therefor shall be a charge against general maintenance.
- (14) The State Highway Commission shall have authority to provide roads for the connection of airports in the State with the public highway system, and to mark the highways and erect signals along the same for the guidance and protection of aircraft.
- (15) The State Highway Commission shall have authority to provide facilities for the use of water-borne traffic by establishing connections between the highway system and the navigable waters of the State by means of connecting roads and piers.
- (16) The State Highway Commission shall have authority, under the power of eminent domain and under the same procedure as provided for the acquirement of rights of way, to acquire title in fee simple to parcels of land for the purpose of exchanging the same for other real property to be used for the establishment of rights of way or for the widening of existing rights of way or the clearing of obstructions that, in the opinion of the Commission, constitute dangerous hazards at intersections. Real property may be acquired for such purposes only when the owner of the property needed by the Commission has agreed in writing to accept the property so acquired in exchange for that to be used by the Commission, and when, in the opinion of the Commission, an economy in the expenditure of public funds and the improvement and convenience and safety of the highway can be effected thereby.
- (17) The State Highway Commission is hereby authorized and required to maintain and keep in repair, sufficient to accommodate the public school buses, roads leading from the State-maintained public roads to all public schools and public school buildings to which children are transported on public school buses to and from their homes. And said Commission is further authorized to maintain and repair sufficient parking facilities for the school buses at those schools.
- (18) To co-operate with appropriate agencies of the United States in acquiring rights of way for and in the construction and maintenance of flight strips or emergency landing fields for aircraft adjacent to State highways.
- (19) To prohibit the erection of any informational, regulatory, or warning signs within the right of way of any highway project built within the corporate

limits of any municipality in the State where the funds for such construction are derived in whole or in part from federal appropriations expended by the State Highway Commission, unless such signs have first been approved by the State Highway Commission.

- (20) The State Highway Commission is hereby authorized to maintain and keep in repair a suitable way of ingress and egress to all public or church cemeteries or burial grounds in the State notwithstanding the fact that said road is not a part of the State maintained system of roads. For the purpose of this subdivision a public or church cemetery or burial ground shall be defined as a cemetery or burial ground in which there are buried or permitted to be buried deceased persons of the community in which said cemetery or burial ground is located, but shall not mean a privately owned cemetery operated for profit or family burial plots.
- (21) The State Highway Commission is hereby authorized and directed to remove all dead animals from the traveled portion and rights-of-way of all primary and secondary roads and to dispose of such animals by burial or otherwise. (1921, c. 2, s. 10; 1923, c. 160, s. 1; c. 247; C. S., s. 3846(j); 1929, c. 138, s. 1; 1931, c. 145, ss. 21, 25; 1933, c. 172; c. 517, s. 1; 1935, c. 213, s. 1; c. 301; 1937, c. 297, s. 2; c. 407, s. 80; 1941, c. 47; c. 217, s. 6; 1943, c. 410; 1945, c. 842; 1951, c. 372; 1953, c. 437; 1957, c. 65, s. 11; c. 349, s. 9; 1959, c. 557; 1963, cc. 520, 1155.)

Cross References.—See generally the chapters on Motor Vehicles and Utilities Commission. As to authority to designate and mark truck routes, see § 20-141 (i). As to power to determine the maximum load limit for bridges, see § 136-72.

Editor's Note.—The 1929 amendment added subdivision (13), and the 1931 amendments added subdivisions (14) and (15), and the last sentence of subdivision (12). The 1933 amendments changed the name "State Highway Commission" to "State Highway and Public Works Commission."

The first 1937 amendment added subdivision (16). The first 1941 amendment added subdivision (17). The 1943 amendment added subdivision (18), and the 1945 amendment added subdivision (19).

The 1951 and 1953 amendments rewrote subdivision (9) and (17), respectively.

The first 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission" throughout the section. The second 1957 amendment struck out a former subdivision relating to the administration of the State Prison System.

The 1959 amendment added subdivision (20).

The first 1963 amendment added subdivision (21).

The second 1963 amendment substituted "article 9 of chapter 136" for "chapter forty" in the first proviso in subdivision (3) and added the second proviso to that subdivision.

Under *Brown v. United States*, 263 U. S. 78, 44 S. Ct. 92, 68 L. Ed. 171 (1923), and *Dohany v. Rogers*, 281 U. S. 362, 50 S. Ct. 299, 74 L. Ed. 904, 68 A. L. R. 434 (1930), it is likely that the taking of property for exchange purposes under the provisions of subdivision (16) would be held to be for a public use. 15 N. C. Law Rev. 365.

Section Construed with § 136-47.—This section, giving the Commission broad and comprehensive discretionary powers in the adoption of routes, should be construed in pari materia with § 136-47, the latter limiting the discretion conferred in the former, among other things, in respect to routes between "county seats, principal towns, etc.," according to a map referred to therein, and as to those matters particularly mentioned in § 136-47, the discretion was taken away from the Commission by express statutory provision. *Cameron v. State Highway Comm.*, 188 N. C. 84, 123 S. E. 465 (1924).

Powers of Commission Are Incidental to Purpose for Which It Was Created.—The Commission is the State agency created for the purpose of constructing and maintaining our public highways. All the other powers it possesses are incidental to the purpose for which it was created. *De Bruhl v. State Highway & Public Works Comm.*, 245 N. C. 139, 95 S. E. (2d) 553 (1956); *C. C. T. Equipment Co. v. Hertz Corp.*, 256 N. C. 277, 123 S. E. (2d) 802 (1962).

Powers Implied from General Authority Given and Duty Imposed.—Where a course of action is reasonably necessary for the effective prosecution of the Commission's obligation to supervise the construction, repair and maintenance of public highways, the power to take such action must be implied from the general authority given and the duty imposed. *C. C. T. Equipment Co. v. Hertz Corp.*, 256 N. C. 277, 123 S. E. (2d) 802 (1962).

Broad Discretion in Changing Roads.—Subdivision (2) of this section and § 136-45, give broad discretionary powers to the State Highway Commission in establishing, altering, and changing the route of county roads that are or are proposed to be ab-

sorbed in the State highway system of public roads. *Road Comm. v. State Highway Comm.*, 185 N. C. 56, 115 S. E. 886 (1923).

Construction of New Roads.—Subdivision (2) of this section does not authorize the Commission to totally abandon an existing part of the highway system and construct an entirely new road in its place. *Newton v. State Highway Comm.*, 194 N. C. 159, 138 S. E. 601 (1927).

But in view of this subsection the Commission may construct new roads notwithstanding statute authorizing the Commission "to take over for State maintenance additional roads heretofore maintained by the several counties." *Board of Com's v. State Highway Comm.*, 195 N. C. 26, 141 S. E. 539 (1928).

Power to Acquire Residences.—The State Highway Commission does not have authority to acquire residences, either by purchase or by eminent domain, unless such residence is needed for construction or maintenance of the highway system. *De Bruhl v. State Highway & Public Works Comm.*, 245 N. C. 139, 95 S. E. (2d) 553 (1956).

Condemnation or Curtailment of Abutting Landowner's Right of Access to Limited Access Highway.—The power and authority vested in the State Highway and Public Works Commission, by virtue of the statutes enacted by the General Assembly, "to acquire by gift, purchase, or otherwise, any road or highway, or tract of land or other property whatsoever that may be necessary for a State highway system," to condemn private property "as it may deem necessary and suitable for road construction," "to make rules, regulations and ordinances for the use of, and to police traffic on, the State highways," and to have "such powers as are necessary to comply fully with the provisions of the present or future federal aid grants," is expressed in language broad and extensive and general and comprehensive enough and the object so general and prospective in operation as to authorize the Commission to exercise the power of eminent domain to condemn or severely curtail an abutting landowner's right of access to a State public highway adjacent to his property for the construction or reconstruction, maintenance and repair, of a limited-access highway upon the payment of just compensation. *Hedrick v. Graham*, 245 N. C. 249, 96 S. E. (2d) 129 (1957).

Contract with County Commissioners.—In contemplation of the statute, the State Highway Commission is entrusted to construct and maintain a system of public highways and to contract in reference thereto, and a contract made between the Commission and the board of commissioners of a county wherein the latter is to advance certain moneys as a proportionate expense in the former's taking over and maintaining a particular highway to be repaid by the State Highway Commission from its funds

is a valid and legal contract, supported by a sufficient consideration. *Young v. Board*, 190 N. C. 52, 128 S. E. 401 (1925).

Liability of Contractor Constructing Road under Contract with State Highway Commission.—One who contracts with a public body for the performance of public work is entitled to share the immunity of the public body from liability for incidental injuries necessarily involved in the performance of the contract, where he is not guilty of negligence. *Gilliam v. Propst Constr. Co.*, 256 N. C. 197, 123 S. E. (2d) 504 (1962).

Defendant contractor owed plaintiff no duty to warn the public that a road constructed in accordance with the Commission's plans could not be used at a speed in excess of 25 m.p.h., when the Highway Commission had accepted the work by directing that the road be opened for traffic posting such signs thereon as it deemed proper. *Gilliam v. Propst Constr. Co.*, 256 N. C. 197, 123 S. E. (2d) 504 (1962).

Tort liability cannot be imposed on a contractor who constructs a road conforming to plans and specifications prepared by the Highway Commission merely because such road cannot be safely used at a speed in excess of 25 m.p.h. *Gilliam v. Propst Constr. Co.*, 256 N. C. 197, 123 S. E. (2d) 504 (1962).

Use of Highway by Telephone and Telegraph Companies.—The Commission has been granted exclusive control over the State highway system and may in its discretion authorize the use of a highway right of way by telephone and telegraph companies, and prescribe the manner and extent of such use, subject to the right of the owner of the servient estate to payment of compensation for the additional burden. *Hildebrand v. Southern Bell Tel., etc., Co.*, 221 N. C. 10, 18 S. E. (2d) 827 (1942). See also *Hildebrand v. Southern Bell Tel., etc., Co.*, 219 N. C. 402, 14 S. E. (2d) 252 (1941).

The effect of this section is to give dominance to the easement acquired by the State. Under the terms thereof the Highway Commission has authority to control the uses to which the land embraced within the easement may be put. If it deems it wise or expedient so to do in the interest of the traveling public, it may altogether exclude the imposition of any additional easement or burden. It may not be held that the legislature intended thereby to declare that the construction and maintenance of a telephone line is a legitimate highway purpose and embraced within the easement acquired for highway use. The Commission is merely authorized to do whatever is necessary to be done in order to make a safe, convenient, public way for travel, including the right, if necessary, to exclude the owner and others from using any part of the surface of the way for any permanent or private purpose. *Hildebrand v. Southern Bell Tel., etc., Co.*, 219 N. C. 402, 14 S. E. (2d) 252 (1941).

Except for the purpose of ingress and

egress the owner of the fee uses the same, whether for building or cultivation, by permission and not as a matter of right. *Hildebrand v. Southern Bell Tel., etc., Co.*, 219 N. C. 402, 14 S. E. (2d) 252 (1941).

Right to Sue and Be Sued.—The statutes creating the State Highway Commission enumerate their powers and duties in the construction, maintenance, etc., of highways for public benefit, without either expressly or impliedly giving it the right to sue and be sued, but manifestly is an agency of the State for the purpose of exercising administrative and governmental functions. *Carpenter v. Atlanta, etc., R. Co.*, 184 N. C. 400, 114 S. E. 693 (1922).

The Commission cannot be sued for tort or trespass, even though the trespass allegedly occurs in the building of a public highway. *Moore v. Clark*, 235 N. C. 364, 70 S. E. (2d) 182 (1952).

Injunction Will Not Lie against Commission.—Plaintiffs sued the State Highway and Public Works Commission to enjoin it from enforcing its ordinance restricting the placing of advertising signs along the State highways, alleging that the ordinance was in excess of the authority vested in the Commission and was unconstitutional. The members of the Commission were not made parties defendant. It was held that defendant's demurrer was properly sustained, since injunction will not lie against a State agency to prevent it from committing a wrong. *Schloss v. State Highway, etc., Comm.*, 230 N. C. 489, 53 S. E. (2d) 517 (1949). See *Moore v. Clark*,

235 N. C. 364, 70 S. E. (2d) 182 (1952).

Judicial Notice of Highway Ordinance.—An ordinance of the Highway Commission does not come within that class of legislative enactments of which the courts will take judicial notice. *State v. Toler*, 195 N. C. 481, 142 S. E. 715 (1928).

Grade Crossing Abandoned by Commission.—The commissioners of a county are without power to order a grade crossing abandoned by the Highway Commission reopened to the public, and this power is not given the county by § 136-67. *Rockingham v. Norfolk, etc., R. Co.*, 197 N. C. 116, 147 S. E. 832 (1929).

Where the Commission has taken over the construction of a town, street and bridge, the town is not thereby relieved of liability for an injury proximately caused by a dangerous condition of the street at the bridge when the town has had implied notice of such condition which had existed for several months, this section expressly excepting from its provisions streets in towns and cities. *Pickett v. Carolina, etc., Ry.*, 200 N. C. 750, 158 S. E. 398 (1931).

Applied in *Cahoon v. Roughton*, 215 N. C. 116, 1 S. E. (2d) 362 (1939); as to subdivision (7), in *Shaver Motor Co. v. Statesville*, 237 N. C. 467, 75 S. E. (2d) 324 (1953).

Cited in *Radford v. Young*, 194 N. C. 747, 140 S. E. 806 (1927); *State v. Henderson*, 207 N. C. 258, 176 S. E. 758 (1934); *Wood v. Carolina Tel., etc., Co.*, 228 N. C. 605, 46 S. E. (2d) 717, 3 A. L. R. (2d) 1 (1948); *Smith v. State Highway Comm.*, 257 N. C. 410, 126 S. E. (2d) 87 (1962).

§ 136-18.1. Use of Bermuda grass.—The use of Bermuda grass shall be restricted to sections of the highway where the abutting property is not in cultivation, except where the State Highway Commission has written consent of the abutting landowner. In long sections of woodland or waste land sufficiently distant from cultivated areas, Bermuda grass may be used. The Commission and its employees shall use every reasonable effort to eliminate Bermuda grass heretofore planted on the shoulders of the highways through cultivated farm areas. (1945, c. 992; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

§ 136-18.2. Seed planted by Commission to be approved by Department of Agriculture.—The State Highway Commission shall not cause any seed to be planted on or along any highway or road right-of-way unless and until such seed has been approved by the State Department of Agriculture as provided for in the rules and regulations of the Department of Agriculture for such seed. (1957, c. 1002.)

Editor's Note.—By virtue of Session Laws 1957, c. 65, § 11, "State Highway Commission" was substituted for "State Highway and Public Works Commission."

§ 136-19. Acquisition of land and deposits of materials; condemnation proceedings; federal parkways.—The State Highway Commission is vested with the power to acquire either in the nature of an appropriate easement or in fee simple such rights of way and title to such land, gravel, gravel beds or bars, sand, sand beds or bars, rock, stone, boulders, quarries, or quarry beds, lime or other earth or mineral deposits or formations, and such standing timber as it may deem necessary and suitable

ble for road construction, maintenance, and repair, and the necessary approaches and ways through, and a sufficient amount of land surrounding and adjacent thereto, as it may determine to enable it to properly prosecute the work, either by purchase, donation, or condemnation, in the manner hereinafter set out. If any parcel is acquired in fee simple as authorized by this section and the Commission later determines that the parcel is not needed for highway purposes, first consideration shall be given to any offer to repurchase made by the owner from whom said parcel was acquired or the heirs or assigns of such owner. The Commission is also vested with the power to acquire such additional land alongside of the rights of way or roads as in its opinion may be necessary and proper for the protection of the roads and roadways, and such additional area as may be necessary as by it determined for approaches to and from such material and other requisite area as may be desired by it for working purposes. The Commission may, in its discretion, with the consent of the landowner, acquire in fee simple an entire lot, block or tract of land, if by so doing, the interest of the public will be best served, even though said entire lot, block or tract is not immediately needed for right of way purposes.

Whenever the Commission and the owner or owners of the lands, materials, and timber required by the Commission to carry on the work as herein provided for, are unable to agree as to the price thereof, the Commission is hereby vested with the power to condemn the lands, materials, and timber and in so doing the ways, means, methods, and procedure of article 9 of this chapter shall be used by it exclusively.

The State Highway Commission shall have the same authority, under the same provisions of law hereinbefore provided for construction of State highways, for the acquirement of all rights of way and easements necessary to comply with the rules and regulations of the United States government for the construction of federal parkways and entrance roads to federal parks in the State of North Carolina. The acquirement of a total of one hundred and twenty-five acres per mile of said parkways, including roadway and recreational and scenic areas on either side thereof, shall be deemed a reasonable area for said purpose. The right of way acquired or appropriated may, at the option of the Commission, be a fee simple title, and the nature and extent of the right of way and easements so acquired or appropriated shall be designated upon a map showing the location across each county, and, when adopted by the Commission, shall be filed with the register of deeds in each county, and, upon the filing of said map, such title shall vest in the State Highway Commission. The said Commission is hereby authorized to convey such title so acquired to the United States government, or its appropriate agency, free and clear of all claims for compensation. All compensation contracted to be paid or legally assessed shall be a valid claim against the State Highway Commission, payable out of the construction fund of said Commission.

The action of the State Highway Commission heretofore taken in the acquirement of areas for the Blue Ridge Parkway in accordance with the rules and regulations of the United States government is hereby ratified and approved and declared to be a reasonable exercise of the discretion vested in the said Commission in furtherance of the public interest.

When areas have been tentatively designated by the United States government to be included within a parkway, but the final survey necessary for the filing of maps as provided in this section has not yet been made, no person shall cut or remove any timber from said areas pending the filing of said maps after receiving notice from the State Highway Commission that such area is under investigation; and any property owner who suffers loss by reason of the restraint upon his right to use the said timber pending such investigation shall be entitled to recover compensation from the State Highway Commission for the temporary appropriation of his property, in the event the same is not finally included within the appropriated area, and the provisions of this section may be enforced under the same law now applicable for the adjustment of compensation in the acquirement of rights of way on other property by the State Highway Commission. (1921, c. 2, s. 22; 1923, c. 160, s. 6; C. S., s. 3846(bb);

1931, c. 145, s. 23; 1933, c. 172, s. 17; 1935, c. 2; 1937, c. 42; 1949, c. 1115; 1953, c. 217; 1957, c. 65, s. 11; 1959, c. 1025, s. 1; cc. 1127, 1128; 1963, c. 638.)

Cross Reference.—As to condemnation generally for roads, etc., see § 136-103 et seq. As to power of the State Highway Commission to condemn or curtail right of access of abutting owner to limited access highway, see § 136-18.

Editor's Note.—The 1931 amendment struck out the following from the first paragraph of this section: "Provided, that the right of condemnation provided for in this article shall not apply to gravel beds or bars, sand beds or bars, rock, stone, boulders, quarries, or quarry beds, lime, or other earth, or mineral deposits or formations in actual bona fide operation for commercial purposes by private enterprise."

The 1935 amendment added the last paragraph of this section, as it stood prior to the 1937 amendment, which also inserted the second sentence of the third paragraph and added the next to last paragraph.

The 1949 amendment rewrote the former second paragraph.

The 1953 amendment made changes in the former second paragraph.

The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission" throughout the section.

The first 1959 amendment deleted the former second, third and fourth paragraphs and inserted in lieu thereof the present second paragraph.

The second 1959 amendment inserted near the beginning of the first sentence the phrase "either in the nature of an appropriate easement or in fee simple." It also added the second sentence.

The third 1959 amendment added the last sentence of the first paragraph.

The 1963 amendment inserted "and entrance roads to federal parks" near the end of the first sentence of the third paragraph.

For comment on the operation of this section in connection with chapter 40, see 28 N. C. Law Rev. 403.

For case law survey on eminent domain, see 41 N. C. Law Rev. 471.

A number of the cases cited below were decided under this section as it stood prior to the first 1959 amendment, when the power to condemn was exercised pursuant to the provisions of chapter 40 rather than the provisions of article 9 of this chapter.

Rights in Land Acquired by Purchase.—The purchase of a right of way by the Commission, under the provisions of this section, vests in the Commission the same rights as though it had acquired the land by condemnation. *Sale v. State Highway, etc., Comm.*, 238 N. C. 599, 78 S. E. (2d) 724 (1953).

The Commission possesses the sovereign power of eminent domain, and by reason thereof can take private property for public use for highway purposes. The Commission may do this either by bringing a special proceeding against the owner for the con-

demnation of the property under this section, or by actually seizing the property and appropriating it to public use. *Moore v. Clark*, 235 N. C. 364, 70 S. E. (2d) 182 (1952).

Special Proceeding by Commission Not Required.—The Highway Commission is not required to bring a special proceeding against the owner for the condemnation of private property prior to taking it, but may actually take the property and appropriate it to public use. When this is done the property owner is entitled to just compensation, but he must pursue the prescribed remedy. *Williams v. North Carolina State Highway Comm.*, 252 N. C. 772, 114 S. E. (2d) 782 (1960).

Extent of Right in Land Acquired by Condemnation.—Where it exercises the power of eminent domain vested in it by this section and in that way appropriates the land of another to public use as the right of way for a public highway, the Commission acquires once for all the complete legal right to use the entire right of way for highway purposes as long as time shall last. *State Highway, etc., Comm. v. Black*, 239 N. C. 198, 79 S. E. (2d) 778 (1954).

Right to Compensation Does Not Rest upon Statute.—The right to compensation for property taken under the power of eminent domain does not rest upon statute but has always obtained in this jurisdiction. *Lewis v. North Carolina State Highway, etc., Comm.*, 228 N. C. 618, 46 S. E. (2d) 705 (1948).

Payment of Award.—The Commission is not required to pay into court the amount assessed as compensation for land taken, as a condition precedent to taking possession of the land sought to be acquired for right of way for public highway purposes. *North Carolina State Highway & Public Works Comm. v. Pardington*, 242 N. C. 482, 88 S. E. (2d) 102 (1955).

The payment by the Commission of the amount of the award before taking possession is voluntary, but where the letter of transmittal as well as the notation on the voucher disclosed that same was in payment of award, and the property owner accepted same, the question of compensation was settled. *North Carolina State Highway & Public Works Comm. v. Pardington*, 242 N. C. 482, 88 S. E. (2d) 102 (1955).

Registering Maps Covering Adjacent Lands.—The Highway Commission, already in possession of a traveled highway, could not get title to adjacent lands by simply registering with the register of deeds a map covering them, without exercising any rights of dominion or possession and without notice to the owners. *Martin v. United States*, 240 F. (2d) 326 (1957).

While rights in lands adjacent to the highway were not acquired by the mere

filing of maps with the register of deeds, the filing of the maps was sufficient to vest title if accompanied by acts of dominion sufficient to constitute taking possession of or assertion of dominion over such lands. *Martin v. United States*, 240 F. (2d) 326 (1957).

Title passes from the private owner to North Carolina when the map is filed, but the acquisition or appropriation must be by other acts under the general laws for the procurement of lands for State highways, and under the laws of North Carolina, acts or conduct cannot be a taking of property unless reasonably calculated to give notice to the owner of the appropriation of his property. *Martin v. United States*, 270 F. (2d) 65 (1959).

Commission Not Subject to Suit Except as Provided by Law.—The State Highway and Public Works Commission is an agency of the State and as such is not subjected to suit save in a manner expressly provided by statute. *Schloss v. State Highway, etc., Comm.*, 230 N. C. 489, 53 S. E. (2d) 517 (1949); *Moore v. Clark*, 235 N. C. 364, 70 S. E. (2d) 182 (1952). See *Cannon v. Wilmington*, 242 N. C. 711, 89 S. E. (2d) 595 (1955); *Williams v. North Carolina State Highway Comm.*, 252 N. C. 772, 114 S. E. (2d) 782 (1960).

The Commission cannot be required to make recompense in any way in an ordinary civil action for an injury to property, no matter what the source of the injury may be. *Moore v. Clark*, 235 N. C. 364, 70 S. E. (2d) 182 (1952).

Procedure for Adjusting Claim Exclusive.—The State Highway Commission is charged with the duty of exercising certain administrative and governmental functions, and statutory method of procedure for adjusting and litigating claims against it is exclusive and may alone be pursued. *Latham v. State Highway Comm.*, 191 N. C. 141, 131 S. E. 385 (1926).

The owner of land cannot maintain an action in tort against the State Highway Commission, an unincorporated governmental agency, for damages caused to his land for its having been taken by the Commission for highway purposes, and is confined for his remedy to the provisions of the special proceedings of this section. *McKinney v. North Carolina State Highway Comm.*, 192 N. C. 670, 135 S. E. 772 (1926).

If the Commission and the owner are unable to agree upon the compensation justly accruing to the latter from the taking of his property by the former, the owner must seek such compensation in the only mode appointed by law for the purpose, i. e., by a special proceeding in condemnation under this section. *Moore v. Clark*, 235 N. C. 364, 70 S. E. (2d) 182 (1952).

Six Months' Limitation upon Action for Damages.—The requirement of this section that actions for damages for the taking of a right of way for highway purposes where the owner and the Commission cannot

agree upon the amount must be commenced within six months from the completion of the project, is a statute of limitation rather than a condition precedent to the right of action. *Lewis v. North Carolina State Highway, etc., Comm.*, 228 N. C. 618, 46 S. E. (2d) 705 (1948).

Commission Held Not Estopped to Plead Statute of Limitation.—The fact that representatives of the Commission assured the owners of the servient tenement that the Commission would provide them a safe approach to the new highway, does not estop the Commission from pleading the six months' statute of limitations as a defense to their action for damages for the taking of a right of way for highway purposes, there being no evidence that the Commission requested plaintiffs to delay the pursuit of their rights or that it made any agreement, express or implied, that it would not plead the statute. *Lewis v. North Carolina State Highway, etc., Comm.*, 228 N. C. 618, 46 S. E. (2d) 705 (1948).

Either Party May Institute Proceedings.—If the owner and the Commission are unable to agree as to the amount of compensation for taking of property under eminent domain, either party may institute proceedings to have the matter determined. *Proctor v. State Highway, etc., Comm.*, 230 N. C. 687, 55 S. E. (2d) 479 (1949).

Special Proceeding under § 40-12.—When the Commission, in the exercise of the power of eminent domain conferred upon it by statute takes land or any interest therein for highway purposes, the owner's remedy is by special proceeding as provided in § 40-12. *Cannon v. Wilmington*, 242 N. C. 711, 89 S. E. (2d) 595 (1955); *Jacobs v. State Highway Comm.*, 254 N. C. 200, 118 S. E. (2d) 416 (1961). But see now article 9 of this chapter.

Recovery of Consideration Agreed to Be Paid.—Where the Commission has failed to pay consideration for a right-of-way easement executed by landowners in accordance with an agreement between them and the Commission, the landowners may bring an action at law in the superior court to recover such consideration, and a special proceeding under this section and § 40-12 et seq., is not proper. *Sale v. State Highway & Public Works Comm.*, 242 N. C. 612, 89 S. E. (2d) 290 (1955).

Petition of Landowner in Proceeding to Recover Compensation.—When a land owner initiates a special proceeding to recover compensation from the Commission under the provisions of this statute, his petition must allege, among other things, facts showing that his land has been taken or damaged for public use without just compensation by the Commission. *Newton v. North Carolina State Highway, etc., Comm.*, 239 N. C. 433, 79 S. E. (2d) 917 (1954).

A cause of action for breach of contract cannot be joined in a special proceeding for condemnation, under this section and § 40-

12. *Dalton v. State Highway, etc., Comm.*, 223 N. C. 406, 27 S. E. (2d) 1 (1943).

Acquisition of Top Soil.—The Commission is authorized by this section to acquire by condemnation top soil deemed necessary and suitable for road construction, "top soil" being included in the generic term "earth," and its power to acquire top soil is not limited to lands contiguous to the highway upon which it is to be used. *State Highway, etc., Comm. v. Basket*, 212 N. C. 221, 193 S. E. 16 (1937).

Lowering of Canal Bridge.—Petitioner constructed a canal across a county highway and thereafter maintained the bridge constructed over the canal. The State Highway Commission, upon taking over the highway, constructed a new bridge and later constructed a second new bridge which was some two and one-half inches lower than the first. Petitioner instituted a proceeding under this section to recover compensation upon his contention that the lowering of the bridge interfered with the use of the canal in floating his barge under the bridge. It was held that the use of the canal by petitioner was permissive and subject to the easement for highway purposes, and therefore petitioner was not entitled to recover compensation. *Dodge v. State Highway, etc., Comm.*, 221 N. C. 4, 18 S. E. (2d) 706 (1942).

Negligence Causing Cave-In.—Where plaintiff's building was damaged by a cave-in resulting from alleged negligence in excavation work incident to the construction of a highway overpass, plaintiffs were not relegated to a claim for damages against the Highway Commission as for a taking of their property under this section, and the demurrer of the contractor for the Highway Commission in plaintiff's action in tort was properly overruled. *Broadhust v. Blythe Bros. Co.*, 220 N. C. 464, 17 S. E. (2d) 646 (1941).

Right to Just Compensation Where Evidence is Insufficient to Show Taking Was for Private Purpose.—Where there was no evidence upon the record showing that the taking over of a road as part of the county system was for a private purpose sufficient to raise an issue of fact, plaintiff is remitted to his rights under this section for the recovery of just compensation. *Reed v. State Highway, etc., Comm.*, 209 N. C. 648, 184 S. E. 513 (1936).

Liability of Contractor.—A contractor who is employed by the Commission to do work incidental to the construction or maintenance of a public highway and who performs such work with proper care and skill cannot be held liable to an owner for damages resulting to property from the performance of the work. The injury to the property in such a case constitutes a taking of the property for public use for highway purposes, and the only remedy available to the owner is a special proceeding against the Commission under this section to recover compensation for the property taken or damaged. But if the contractor employed

by the Commission performs his work in a negligent manner and thereby proximately injures the property of another, he is personally liable to the owner therefor. *Moore v. Clark*, 235 N. C. 364, 70 S. E. (2d) 182 (1952); *Guilford Realty & Ins. Co. v. Blythe Bros. Co.*, 260 N. C. 69, 131 S. E. (2d) 900 (1963).

Rule of Damages for Property Taken.—For a statement of the rule of damages for property taken, see *State Highway, etc., Comm. v. Black*, 239 N. C. 198, 79 S. E. (2d) 778 (1954).

Where only a part of a tract of land is appropriated for highway purposes, the measure of damages in such proceeding is the difference between the fair market value of the entire tract immediately before the taking and the fair market value of what is left immediately after the taking. The items going to make up this difference embrace compensation for the part taken and compensation for injury to the remaining portion, which is to be offset under the terms of the controlling statute by any general and special benefits resulting to the landowner from the utilization of the property taken for a highway. *Robinson v. State Highway Comm.*, 249 N. C. 120, 105 S. E. (2d) 287 (1958); *Barnes v. North Carolina State Highway Comm.*, 250 N. C. 378, 109 S. E. (2d) 219 (1959); *Barnes v. North Carolina State Highway Comm.*, 257 N. C. 507, 126 S. E. (2d) 732 (1962).

Measure of Damages for Property Injured.—The owner of a water mill which had a right of ingress and egress to his mill over the land of another and had constructed a bridge and maintained a ferry situated to command a large patronage can recover damages for the injury to his property by the building of a highway but not for profits from his mill which is too speculative. *Riverside Milling Co. v. State Highway Comm.*, 190 N. C. 692, 130 S. E. 724 (1925).

Price paid at voluntary sales of land similar to condemnee's land at or about the time of taking is admissible as independent evidence of value of land taken. *Barnes v. North Carolina State Highway Comm.*, 250 N. C. 378, 109 S. E. (2d) 219 (1959).

In estimating its value, all of the capabilities of the property, and all of the uses to which it may be applied or for which it is adapted, which affect its value in the market, are to be considered, and not merely the condition it is in at the time and the use to which it is then applied by the owner. *Williams v. State Highway Comm.*, 252 N. C. 514, 114 S. E. (2d) 340 (1960).

Rental Value.—When rental property is condemned the owner may not recover for lost rents, but rental value of property is competent upon the question of the fair market value of the property at the time of the taking. *Kirkman v. State Highway Comm.*, 257 N. C. 428, 126 S. E. (2d) 107 (1962).

Evidence of Market Value of Remaining

Land.—In a special proceeding to assess compensation for land of an educational institution taken for highway purposes, any evidence which aids the jury in fixing in fair market value of the remaining land, and its diminution by the burden upon it, including everything which affects the market value of the land remaining, is competent. *Gallimore v. State Highway, etc., Comm.*, 241 N. C. 350, 85 S. E. (2d) 392 (1955); *Barnes v. North Carolina State Highway Comm.*, 250 N. C. 378, 109 S. E. (2d) 219 (1959).

Elements of Damage.—In proceedings to take land for a public highway, the measure of damages is the difference in the fair market value of the entire tract immediately before and immediately after the taking, the elements upon which the damages are predicted being the fair market value of the land taken and the injury to respondent's remaining land, less any general and special benefits accruing to respondent from the construction of the highway. *State Highway, etc., Comm. v. Hartley*, 218 N. C. 438, 11 S. E. (2d) 314 (1940). See *Dalton v. State Highway, etc., Comm.*, 233 N. C. 406, 27 S. E. (2d) 1 (1943); *Williams v. State Highway Comm.*, 252 N. C. 514, 114 S. E. (2d) 340 (1960).

The measure of damages for the taking of a part of a tract of land for highway purposes is the difference between the fair market value of respondent's land immediately before the taking and the fair market value of the portion left immediately after the taking, which difference embraces compensation for the part taken and compensation for injury to the remaining portion, less general and special benefits resulting to the landowner by the utilization of the property for a highway. *Proctor v. State Highway, etc., Comm.*, 230 N. C. 687, 55 S. E. (2d) 479 (1949).

When the taking renders the remaining land unfit or less valuable for any use to which it is adapted, that fact is a proper item to be considered in determining whether the taking has diminished the value of the land itself. *Kirkman v. State Highway Comm.*, 257 N. C. 428, 126 S. E. (2d) 107 (1962).

Loss of profits or injury to a growing business conducted on property or connected therewith are not elements of recoverable damages in an award for the taking under the power of eminent domain. *Kirkman v. State Highway Comm.*, 257 N. C. 428, 126 S. E. (2d) 107 (1962).

Offsets Allowed.—In an action to recover damages resulting from the relocation of a public road through the lands of plaintiff, both the special and general benefits accruing to plaintiff by reason of the construction of the highway should be allowed as offsets against any damages which plaintiff might have sustained, and an instruction that limits offsets to special advantages that accrued to plaintiff is erroneous. *Bailey v. State Highway, etc., Comm.*, 214 N. C. 278, 199 S. E. 25 (1938); *Taylor Co. v.*

North Carolina State Highway & Public Works Comm., 250 N. C. 533, 109 S. E. (2d) 243 (1959).

At the time of the relocation of a road and when suit was instituted, the rule for the admeasurement of damages was as prescribed by this section prior to the 1923 amendment. *Lanier v. Greenville*, 174 N. C. 311, 93 S. E. 850 (1917). But before trial, the legislature amended the law by adding: "And in all instances the general and special benefits shall be assessed as offsets against damages," etc. Hence, the law as amended should have been followed in determining the amount plaintiff was entitled to recover. *Wade v. State Highway Comm.*, 188 N. C. 210, 124 S. E. 193 (1924).

Benefits to Independent Tract May Not Be Offset.—When the State takes a part or all of a tract of land for highway purposes, it is not entitled to offset against damages the benefits to other separate and independent parcel or parcels belonging to the landowner whose land was taken. *Barnes v. North Carolina State Highway Comm.*, 250 N. C. 378, 109 S. E. (2d) 219 (1959).

When Tract Independent.—Although adjacent tract was separated from the taken property by an easement and zoned differently, evidence of benefit to that tract was competent to offset damage to property taken. *Barnes v. North Carolina State Highway Comm.*, 250 N. C. 378, 109 S. E. (2d) 219 (1959).

Date of Taking.—Petitioner, electing to try his case on the theory that the date of taking was a particular date, will not be allowed to appeal the judgment awarded on the grounds that the "taking" has actually occurred on a later date when the value of the property has increased. *Taylor Co. v. North Carolina State Highway & Public Works Comm.*, 250 N. C. 533, 109 S. E. (2d) 243 (1959).

Undeveloped Property May Not Be Valued on a Per Lot Basis.—It is proper to show that a particular tract of land is suitable and available for division into lots and is valuable for that purpose, but it is not proper to show the number and value of lots as separated parcels in an imaginary subdivision thereof. In other words, it is not proper for the jury in these cases to consider an undeveloped tract of land as though a subdivision thereon is an accomplished fact. Such undeveloped property may not be valued on per lot basis. The cost factor is too speculative. *Barnes v. North Carolina State Highway Comm.*, 250 N. C. 378, 109 S. E. (2d) 219 (1959).

Commission May Condemn Right of Access to Public Highway.—The State Highway Commission has statutory authority to exercise the power of eminent domain to condemn or severely curtail an abutting landowner's right of access to a public highway adjacent to his property, for the construction or reconstruction, maintenance and repair, of a limited-access highway, upon the payment of just compensation.

Williams v. North Carolina State Highway Comm., 252 N. C. 772, 114 S. E. (2d) 782 (1960), quoting **Hedrick v. Graham**, 245 N. C. 249, 96 S. E. (2d) 129 (1957).

Notwithstanding Contract.—Where a right-of-way agreement gave plaintiffs a right of access at a particular spot to the highway to be constructed on the right of way, the Highway Commission's refusal to allow plaintiffs to enter upon the highway at the point of the easement constituted a taking or appropriation of private property for which an adequate statutory remedy in the nature of a special proceeding is provided, so that plaintiffs' complaint stating a civil action for breach of the agreement was demurrable. **Williams v. North Carolina State Highway Comm.**, 252 N. C. 772, 114 S. E. (2d) 782 (1960).

Remaining Land Left with Direct Access to Only One Lane of Divided Highway.—In determining the injury, if any, to the remaining portion of the owner's land, he is not entitled to compensation for diminution in the value thereof caused by the fact after a divided highway is built he has direct access therefrom only to the lanes of the relocated highway reserved exclusively for southbound traffic and only southbound traffic has direct access thereto. **Barnes v. North Carolina State Highway Comm.**, 257 N. C. 507, 126 S. E. (2d) 732 (1962).

Power of Townships.—No such broad and explicit powers to acquire land and road materials by condemnation were given the road commission of Lovelady Township, Burke County, by Pub. Loc. Laws 1915, ch. 426, as are given by this section to the State Highway Commission, and courts should not go beyond language of statute in construing it. **Lowman v. Abee**, 191 N. C. 147, 131 S. E. 277 (1926).

Interest.—In a proceeding under this section to recover just compensation for the taking of private property for highway purposes, petitioners are entitled, as a matter of strict legal right, to have the jury award them, in addition to the sum the jury finds to be the fair market value of the property on taking date, interest on such sum at the rate of 6 per cent from the date petitioners were physically dispossessed to the date of verdict, as an element of just compensation guaranteed by N. C. Const.,

art. 1, § 17 and the Fourteenth Amendment to the United States Constitution. **DeBruhl v. State Highway & Public Works Comm.**, 247 N. C. 671, 102 S. E. (2d) 229 (1958).

Instruction Held Not Prejudicial.—An instruction to the effect that the market value of property taken by eminent domain should be measured by what the property would bring in voluntary sale by one who desires, but is not obliged, to sell and is bought by one who is under no necessity of buying, will not be held prejudicial for failure to charge that the buyer must be one desiring to buy, when it appears from the entire charge, construed contextually, that the jury could not have been misled but must have understood that the market value was to be determined by what the property would bring by a willing seller, not required to sell, to a wanting buyer, not required to buy. **Taylor Co. v. North Carolina State Highway & Public Works Comm.**, 250 N. C. 533, 109 S. E. (2d) 243 (1959).

Instructions as to Damages Held Error.—See **Robinson v. State Highway Comm.**, 249 N. C. 120, 105 S. E. (2d) 287 (1958).

Applied in Calhoun v. State Highway, etc., Comm., 208 N. C. 424, 181 S. E. 271 (1935); **Laughter v. State Highway, etc., Comm.**, 238 N. C. 512, 78 S. E. (2d) 252 (1953); **Simmons v. State Highway, etc., Comm.**, 238 N. C. 532, 78 S. E. (2d) 308 (1953); **State Highway Comm. v. Privett**, 246 N. C. 501, 99 S. E. (2d) 61 (1957).

Quoted in United States v. Martin, 140 F. Supp. 42 (1956).

Cited in Greenville v. State Highway Commission, 196 N. C. 226, 145 S. E. 31 (1928); **Long v. Randleman**, 199 N. C. 344, 154 S. E. 317 (1930); **Switzerland Co. v. North Carolina State Highway, etc., Comm.**, 216 N. C. 450, 5 S. E. (2d) 327 (1939); **Bailey v. State Highway, etc., Comm.**, 230 N. C. 116, 52 S. E. (2d) 276 (1949); **Cannon v. Wilmington**, 242 N. C. 711, 89 S. E. (2d) 595 (1955); **North Carolina State Highway & Public Works Comm. v. Mullican**, 243 N. C. 68, 89 S. E. (2d) 738 (1955); **Zourzoukis v. State Highway Comm.**, 252 N. C. 149, 113 S. E. (2d) 269 (1960); **Ferrell v. North Carolina State Highway Comm.**, 252 N. C. 830, 115 S. E. (2d) 34 (1960); **State Highway Comm. v. Kenan Oil Co.**, 260 N. C. 131, 131 S. E. (2d) 665 (1963).

§ 136-19.1. Surplus material derived from grading to be made available to adjoining landowners.—It shall be the duty of the State Highway Commission or any contractor working for said Commission to make available to the adjoining landowner any gravel, dirt or material which is available from grading a road or highway through such adjoining lands which is not required or desired by the State Highway Commission for use upon any part of the highway, and said surplus material shall not be sold or disposed of by the State Highway Commission or any contractor working for them until the adjoining landowner has been given the right to accept and use the same when deposited on any convenient place at or near his land by the contractor or the Commission. (1949, c. 1076; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment for "State Highway and Public Works substituted "State Highway Commission" Commission."

§ 136-20. Elimination or safeguarding of grade crossings and inadequate underpasses or overpasses.—(a) Whenever any road or street forming a link in or a part of the State highway system, whether under construction or heretofore or hereafter constructed, shall cross or intersect any railroad at the same level or grade, or by an underpass or overpass, and in the opinion of the chairman of the State Highway Commission such crossing is dangerous to the traveling public, or unreasonably interferes with or impedes traffic on said State highway, the Commission shall issue notice requiring the person or company operating such railroad to appear before the Commission, at its office in Raleigh, upon a day named, which shall not be less than ten days or more than twenty days from the date of said notice, and show cause, if any it has, why such railroad company shall not be required to alter such crossing in such way as to remove such dangerous condition and to make such changes and improvements thereat as will safeguard and secure the safety and convenience of the traveling public thereafter. Such notice shall be served on such railroad company as is now provided by law for the service of summons on domestic corporations, and officers serving such notice shall receive the same fees as now provided by law for the service of such summons.

(b) Upon the day named, the Commission shall hear said matter and shall determine whether such crossing is dangerous to public safety, or unreasonably interferes with traffic thereon. If it shall determine that said crossing is, or upon the completion of such highway will be, dangerous to public safety and its elimination or safeguarding is necessary for the proper protection of the traffic on said State highway, the Commission shall thereupon order the construction of an adequate underpass or overpass at said crossing or it may in its discretion order said railroad company to install and maintain gates, alarm signals or other approved safety devices if and when in the opinion of said Commission upon the hearing as aforesaid the public safety and convenience will be secured thereby. And said order shall specify that the cost of construction of such underpass or overpass or the installation of such safety device shall be allocated between the railroad company and the Commission in the same ratio as the net benefits received by such railroad company from the project bear to the net benefits accruing to the public using the highway, and in no case shall the net benefit to any railroad company or companies be deemed to be more than ten per cent (10%) of the total benefits resulting from the project. The Highway Commission shall be responsible for determining the proportion of the benefits derived by the railroad company from the project, and shall fix standards for the determining of said benefits which shall be consistent with the standards adopted for similar purposes by the United States Bureau of Public Roads under the Federal-Aid-Highway Act of 1944.

(c) Upon the filing and issuance of the order as hereinbefore provided for requiring the construction of any underpass or overpass or the installation and maintenance of gates, alarm signals or other safety devices at any crossing upon the State highway system, it shall be the duty of the railroad company operating the railroad with which said public road or street intersects or crosses to construct such underpass or overpass or to install and maintain such safety device as may be required in said order. The work may be done and material furnished either by the railroad company or the Commission, as may be agreed upon, and the cost thereof shall be allocated and borne as set out in subsection (b) hereof. If the work is done and material furnished by the railroad company, an itemized statement of the total amount expended therefor shall, at the completion of the work, be furnished the Commission, and the Commission shall pay such amount to the railroad company as may be shown on such statement after deducting the amount for which the railroad company is responsible; and if the work is done by the Commission, an itemized statement of the total amount expended shall be furnished to the railroad company, and the railroad company shall pay to the Commission such part thereof as the railroad company may be responsible for as herein provided; such payment by the

railroad company shall be under such rules and regulations and by such methods as the Commission may provide.

(d) Within sixty days after the issuance of the order for construction of an underpass or overpass or the installation of other safety devices as herein provided for, the railroad company against which such order is issued shall submit to the Commission plans for such construction or installation, and within ten days thereafter said Commission, through its chairman, shall notify such railroad company of its approval of said plan or of such changes and amendments thereto as to it shall seem advisable. If such plans are not submitted to the Commission by said railroad company within sixty days as aforesaid, the chairman of the Commission shall have plans prepared and submit them to the railroad company. The railroad company shall within ten days notify the chairman of its approval of the said plans or shall have the right within such ten days to suggest such changes and amendments in the plans so submitted by the chairman of the Commission as to it shall seem advisable. The plans so prepared and finally approved by the chairman of the Commission shall have the same force and effect, and said railroad company shall be charged with like liability, and said underpass or overpass shall be constructed or such safety device installed in accordance therewith, as if said plans had been originally prepared and submitted by said railroad company. If said railroad company shall fail or neglect to begin or complete the construction of said underpass or overpass, or the installation of such safety device, as required by the order of the Commission, said Commission is authorized and directed to prepare the necessary plans therefor, which plans shall have the same force and effect, and shall fix said railroad company with like liability, as if said plans had been originally prepared and submitted by said railroad company, and the Commission shall proceed to construct said underpass or overpass or install such safety device in accordance therewith. An accurate account of the cost of said construction or installation shall be kept by the Commission and upon the completion of such work a statement of that portion thereof chargeable to such railroad company as set out in the order of the Commission shall be rendered said railroad company. Upon the failure or refusal of said company to pay the bill so rendered, the Commission shall recover the amount thereof by suit therefor against said company in the Superior Court of Wake County: Provided, that the payment by such railroad company of said proportionate part may be made under such rules and regulations and by such methods as the Commission may provide. If the Commission shall undertake to do the work, it shall not obstruct or impair the operation of the railroad and shall keep the roadbed and track safe for the operation of trains at every stage of work. If said railroad company shall construct such underpass or overpass or shall install such safety devices in accordance with the order of the Commission, the proportionate share of the cost thereof as set out in subsection (b) hereof shall upon the completion of said work be paid to the railroad company by the Commission. The Commission may inspect and check the expenditures for such construction or installation so made by the railroad company and an accurate account of the cost thereof shall upon the completion of said work be submitted to the Commission by the railroad company. If the Commission shall neglect or refuse to pay that portion of the cost of said construction or installation chargeable to it, the railroad company shall recover the amount thereof by suit therefor against the Commission in the Superior Court of Wake County.

(e) If any railroad company so ordered by the Commission to construct an underpass or overpass or to install safety devices at grade crossings as hereinbefore provided for shall fail or refuse to comply with the order of the Commission requiring such construction or installation, said railroad company shall be guilty of a misdemeanor and shall be fined not less than fifty nor more than one hundred dollars in the discretion of the court for each day such failure or refusal shall continue, each said day to constitute a separate offense.

(f) The jurisdiction over and control of said grade crossings and safety devices upon the State highway system herein given the Commission shall be exclusive.

(g) From any order or decision so made by the Commission the railroad company may appeal to the superior court of the county wherein is located the crossing affected by said order. Such appeal shall not defer or delay the construction of such underpass or overpass or the installation of such safety device as required by the order of the Commission, but the railroad company shall proceed to comply with such order in accordance with its terms. The action of the railroad company in complying with and carrying out such order pending said appeal shall not prejudice or affect the right or remedies of such railroad company on such appeal. Upon such appeal the court shall determine only whether the order of the Commission for such construction or installation is unreasonable and unnecessary for the protection of the traveling public and the apportionment of the cost to the extent hereinafter provided in this subsection, and if upon the hearing of said appeal it shall be determined that said order was unnecessary for the protection of the traveling public, the Commission shall bear the total cost of the construction of such underpass or overpass or the installation of such safety device. In the event the decision on appeal should be that the construction or installation was necessary but the cost or apportionment thereof unreasonable, then the railroad company shall bear its proportion as provided in this section of such cost as may be determined on appeal to have been reasonable to meet the necessity of the case. Upon said appeal from an order of the Commission, the burden of proof shall be upon the railroad company, and if it shall not be found and determined upon said appeal that said order was unreasonable or unnecessary for the protection of the traveling public at said crossing, then such railroad company shall bear its proportion of the cost of such construction or installation in accordance with this section.

(h) The Highway Commission shall pay the cost of maintenance of all overpasses and the railroad company shall pay the cost of maintenance of all underpasses constructed in accordance with this section. The cost of maintenance of safety devices at all intersections of any railroad company and any street or road forming a link in or a part of the State Highway System which have been constructed prior to July 1, 1959 or which shall be constructed thereafter shall be borne fifty per cent (50%) by the railroad company and fifty per cent (50%) by the Highway Commission. The maintenance of said overpasses and underpasses shall be performed by the railroad company or the Highway Commission as may be agreed upon and reimbursement for the cost thereof, in accordance with this section, shall be made annually. The maintenance of such safety devices shall be performed by the railroad company and reimbursement for the cost thereof, in accordance with this section, shall be made annually by the Highway Commission. (1921, c. 2, s. 19; 1923, c. 160, s. 5; C. S., s. 3846(y); 1925, c. 277; 1929, c. 74; 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1959, c. 1216.)

Editor's Note.—The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission" in subsection (a).

The 1959 amendment rewrote the third sentence and added the fourth sentence of subsection (b). It rewrote the second sentence of subsection (c) and omitted the former third sentence thereof. It rewrote the third sentence from the end of subsection (d) and the fifth sentence of subsection (g). The amendment also added subsection (h).

For note on railroads' liability at dangerous highway crossings, see 41 N. C. Law Rev. 296.

Elimination of Grade Crossings.—This section confers upon the Highway Commission the power to eliminate grade crossings. *Mosteller v. Southern Ry. Co.*, 220 N. C. 275, 17 S. E. (2d) 133 (1941).

A municipality is not entitled to a mandatory injunction to compel a railroad company to widen and improve an underpass in the interest of public safety when such underpass, although within the municipality, constitutes a part of a State highway, since the exclusive control over the underpass in such instance is vested in the Commission under subsection (f) of this section. *Williamston v. Atlantic Coast Line R. Co.*, 236 N. C. 271, 72 S. E. (2d) 609 (1952).

Erection of Signaling Devices.—By the enactment of this section the legislature has taken from the railroads authority to erect gates or gongs or other like signaling devices at railroad crossings at will and has vested exclusive discretionary authority in the Commission to determine when and under what conditions such signaling devices are to be erected and maintained by

railroad companies. *Southern Ry. Co. v. Akers Motor Lines*, 242 N. C. 676, 89 S. E. (2d) 392 (1955).

For comment on this decision, see 41 N. C. Law Rev. 296.

Cited in *Rockingham v. Norfolk, etc., R.*

Co., 197 N. C. 116, 147 S. E. 832 (1929); *Austin v. Shaw*, 235 N. C. 722, 71 S. E. (2d) 25 (1952); *Winston-Salem v. Southern Ry. Co.*, 248 N. C. 637, 105 S. E. (2d) 37 (1958).

§ 136-21. Drainage of highway; application to court; summons; commissioners.—Whenever in the establishment, construction, improvement or maintenance of any public highway it shall be necessary to drain said highway, and to accomplish such purpose it becomes necessary to excavate a canal or canals for carrying the surplus water to some appropriate outlet, either along the right of way of said highway or across the lands of other landowners, and by the construction, enlargement or improvement of such canal or canals, lands other than said highway will be drained and benefited, then, and in such event, the State Highway Commission, if said highway be a part of the State highway system, or the county commissioners, if said road is not under State supervision, may, by petition, apply to the superior court of the county in which, in whole or in part, said highway lies or said canal is to be constructed, setting forth the necessity for the construction, improvement or maintenance of said canal, the lands which will be drained thereby, with such particularity as to enable same to be identified, the names of the owners of said land and the particular circumstances of the case; whereupon a summons shall be issued for and served upon each of the proprietors, requiring them to appear before the court at a time to be named in the summons, which shall not be less than ten days from the service thereof, and upon such day the petition shall be heard, and the court shall appoint three disinterested persons, one of whom shall be a competent civil and drainage engineer recommended by the Department of Conservation and Development, and the other two of whom shall be resident freeholders of the county or counties in which the road and lands are, in whole or in part, located, as commissioners, who shall, before entering upon the discharge of their duties, be sworn to do justice between the parties. (1925, c. 85, s. 3; 1925, c. 122, s. 44; 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment for "State Highway and Public Works substituted "State Highway Commission" Commission."

§ 136-22. View by commissioners; report; judgment.—The commissioners, or a majority of them, one of whom must be the engineer aforesaid, shall, on a day of which each party is to be notified at least five days in advance, meet on the premises, and view the highway, or proposed highway, and also the lands which may be drained by the proposed canal, and shall determine and report what lands will be drained and benefited by the construction, enlargement or improvement of such canal, and whether said drainage ought to be done exclusively by said highway authorities, and if they are of opinion that the same ought not to be drained exclusively at their expense, then they shall decide and determine the route of the canal, the dimensions and character thereof, and the manner in which the same shall be cut or thrown up, considering all the circumstances of the case, the extent, area and identity of lands which shall be permitted to drain therein, and providing as far as possible for the effectual drainage of said highway, and the protection and benefit of the lands of all the parties; and they shall apportion the cost of the construction, repair and maintenance of said canal among said highway authorities and said landowners, and report the same to the court, which when confirmed by the clerk shall stand as a judgment of the court against each of the parties, his or its executors, administrators, heirs, assigns or successors. (1925, c. 85, s. 4.)

§ 136-23. Appeal.—Upon the entry of the judgment or decree aforesaid the parties to said action, or any of them, shall have the right to appeal to the superior court in term time under the same rules and regulations as apply to other special proceedings. (1925, c. 85, s. 5.)

§ 136-24. Rights of parties.—The parties to such special proceeding shall have all the rights which are secured to similar parties by article one of chapter one hundred fifty-six of this Code and shall be regulated by the provisions thereof and amendments thereto, in so far as the same are not inconsistent herewith. (1925, c. 85, s. 6.)

§ 136-25. Repair of road detour.—It shall be mandatory upon the State Highway Commission, its officers and employees, or any contractor or subcontractor employed by the said Commission, to select, lay out, maintain and keep in as good repair as possible suitable detours by the most practical route while said highways or roads are being improved or constructed, and it shall be mandatory upon the said Commission and its employees or contractors to place or cause to be placed explicit directions to the traveling public during repair of said highway or road under the process of construction. All expense of laying out and maintaining said detours shall be paid out of the State Highway Fund. (1921, c. 2, s. 11; C. S., s. 3846(s); 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

Section Lays Duty on Both State Highway Commission and Contractor.—This section made it the duty of both the State Highway Commission and the contractors, when the public highways of the State are being improved and constructed, to select, lay out, maintain and keep in as good repair as possible suitable detours by the most practical route. It is the further duty of both to place or cause to be placed explicit directions to the traveling public. *Reynolds v. J. C. Critcher, Inc.*, 256 N. C. 309, 123 S. E. (2d) 738 (1962).

Contractor Not Responsible for Defect

in Road Not under His Supervision.—A highway contractor may not be held responsible for damages resulting from a defect or obstruction in a road not under his supervision. *Reynolds v. J. C. Critcher, Inc.*, 256 N. C. 309, 123 S. E. (2d) 738 (1962).

Defect in State Highway onto Which Traffic Diverted by Contractor.—A contractor working upon a highway, who has a right to and does divert traffic onto another State highway being maintained by the State Highway Commission, is not liable for injuries received in accidents due to defects in said State highway. *Reynolds v. J. C. Critcher, Inc.*, 256 N. C. 309, 123 S. E. (2d) 738 (1962).

§ 136-26. Closing of State highways during construction; injury to barriers, warning signs, etc.—If it shall appear necessary to the State Highway Commission, its officers, or appropriate employees, to close any road or highway coming under its jurisdiction so as to permit of proper completion of work which is being performed, such Commission, its officers or employees, may close, or cause to be closed, the whole or any portion of such road or highway deemed necessary to be excluded from public travel. While any such road or highway, or portion thereof, is so closed, or while any such road or highway, or portion thereof, is in process of construction or maintenance, such Commission, its officers or appropriate employees, or its contractor, under authority from such Commission, may erect, or cause to be erected, suitable barriers or obstruction thereon; may post, or cause to be posted, conspicuous notices to the effect that the road or highway, or portion thereof, is closed; and may place warning signs, lights and lanterns on such road or highway, or portions thereof. When such road or highway is closed to the public or in process of construction or maintenance, as provided herein, any person who willfully drives into new construction work, breaks down, removes, injures or destroys any such barrier or barriers or obstructions on the road closed or being constructed, or tears down, removes or destroys any such notices, or extinguishes, removes, injures or destroys any such warning lights or lanterns so erected, posted or placed, shall be guilty of a misdemeanor. (1921, c. 2, s. 12; C. S., s. 3846(t); 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

Powers of Commission.—This section, together with the general powers of the Commission, authorized the Commission directly or by implication, in the prosecu-

tion of the grading work, to direct and permit soil to be conveyed across a highway, the dirt ramp to be placed on the highway for its protection from injury by heavy equipment, the placing of warning signs along the highway, the stationing of flagmen at the ramp to stop traffic along the highway and close that portion of the road when in use by earth movers, and its grade inspector to give supervision and instruction to the contractor and its employees in carrying out the grading work. *C. C. T. Equipment Co. v. Hertz Corp.*, 256 N. C. 277, 123 S. E. (2d) 802 (1962).

Public Travel May Be Temporarily Suspended.—Public travel on a street or other highway may be temporarily suspended for a necessary or proper purpose, as for example to permit repairs or reconstruction. *C. C. T. Equipment Co. v. Hertz Corp.*, 256 N. C. 277, 123 S. E. (2d) 802 (1962).

Liability of Contractor for Injury.—Contractor constructing highway was not relieved, by an order of the State Highway Commission closing the road to travel, of liability for injuries in an automobile collision with an unlighted disabled truck left by defendant on the side of the highway, where on the part of the road where the accident happened barriers had been removed and to defendant's knowledge many people habitually traversed it. *Thompson Caldwell Const. Co. v. Young*, 294 F. 145 (1923).

Contractor Has Duty to Exercise Ordinary Care.—When a contractor undertakes to perform work under contract with the State Highway Commission, the positive legal duty devolves on him to exercise ordinary care for the safety of the general public traveling over the road on which he is working. *C. C. T. Equipment Co. v. Hertz Corp.*, 256 N. C. 277, 123 S. E. (2d) 802 (1962).

The contractor doing the work is there for a lawful purpose and is not obliged to stop the work every time a traveler drives along. But while the traveler assumes certain risks, he is still a traveler on a public way, and the contractor still owes him due care, and is liable for injuries suffered by him as a result of negligence in the performance of the work. *C. C. T. Equipment Co. v. Hertz Corp.*, 256 N. C. 277, 123 S. E. (2d) 802 (1962).

In Providing and Maintaining Warnings and Safeguards.—Contractors must exercise ordinary care in providing and maintaining reasonable warnings and safeguards against conditions existent at the time and place. *C. C. T. Equipment Co. v. Hertz*

Corp., 256 N. C. 277, 123 S. E. (2d) 802 (1962).

Commission Cannot Impose Different Standard of Care.—The Commission cannot by contract or by supervisory instructions prescribe for contractors a different standard of care from that imposed by the common law in a given situation, as it affects third parties. But in its use of and authority over a highway, for purposes of construction, repair or maintenance, it may create circumstances which bring into play rules of conduct which would not apply if such purposes were not involved. *C. C. T. Equipment Co. v. Hertz Corp.*, 256 N. C. 277, 123 S. E. (2d) 802 (1962).

Sufficiency of Warning.—Actual notice of every special obstruction or defect in a highway is not required to be given to a traveler nor need the way be so barricaded as to preclude all possibility of injury, but it is sufficient if a plain warning of danger is given, and the traveler has notice or knowledge of facts sufficient to put him on inquiry. The test of the sufficiency of the warning is whether the means employed, whatever they may be, are reasonably sufficient for the purpose. *C. C. T. Equipment Co. v. Hertz Corp.*, 256 N. C. 277, 123 S. E. (2d) 802 (1962).

Red Light or Red Flag.—A red light is recognized by common usage as a method of giving warning of danger during hours of darkness, and a driver seeing a red light ahead in the highway is required in the exercise of due care to heed its warning. The same is equally true of a red flag in daylight hours when properly displayed. *C. C. T. Equipment Co. v. Hertz Corp.*, 256 N. C. 277, 123 S. E. (2d) 802 (1962).

Care Required of Traveler.—When extraordinary conditions exist on a highway by reason of construction or repair operations, the motorist is required by law to take notice of them. The traveler's care must be commensurate with the obvious danger. *C. C. T. Equipment Co. v. Hertz Corp.*, 256 N. C. 277, 123 S. E. (2d) 802 (1962).

One who operates an automobile on a public highway which is under construction or repair, or in use for such purposes, cannot assume that there are no obstructions, defects or dangers ahead. In such instances it is the duty of the motorist, in the exercise of due care, to keep his vehicle under such control that it can be stopped within the distance within which a proper barrier or obstruction, or an obvious danger can be seen. *C. C. T. Equipment Co. v. Hertz Corp.*, 256 N. C. 277, 123 S. E. (2d) 802 (1962).

§ 136-27. Connection of highways with improved streets; pipe lines and conduits; cost.—When any portion of the State highway system shall run through any city or town and it shall be found necessary to connect the State highway system with improved streets of such city or town as may be designated as part of such system, the State Highway Commission shall build such connecting links, the same to be uniform in dimensions and materials with such State highways: Provided,

however, that whenever any city or town may desire to widen its streets which may be traversed by the State highway, the Commission may make such arrangements with said city or town in connection with the construction of said road as, in its discretion, may seem wise and just under all the facts and circumstances in connection therewith: Provided further, that such city or town shall save the Commission harmless from any claims for damage arising from the construction of said road through such city or town and including claims for rights of way, change of grade line, and interference with public-service structures. And the Commission may require such city or town to cause to be laid all water, sewer, gas or other pipe lines or conduits, together with all necessary house or lot connections or services, to the curb line of such road or street to be constructed: Provided further, that whenever by agreement with the road governing body of any city or town any street designated as a part of the State highway system shall be surfaced by order of the Commission at the expense, in whole or in part, of a city or town it shall be lawful for the governing body of such city or town to declare an assessment district as to the street to be improved, without petition by the owners of property abutting thereon, and the costs thereof, exclusive of so much of the cost as is incurred at street intersections and the share of railroads or street railways whose tracks are laid in said street, which shall be assessed under their franchise, shall be specially assessed upon the lots or parcels of land abutting directly on the improvements, according to the extent of their respective frontage thereon by an equal rate per foot of such frontage. (1921, c 2, s. 16; 1923, c. 160, s. 4; C. S., s. 3846(ff); 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Local Modification.—Durham: 1925, c. 312; Town of Siler City: 1935 Pr. c. 143.

Editor's Note.—The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

City Has Power to Condemn Land.—Under authority of this section a city has the power and authority to condemn land which is wholly within its limits for a street, and the fact that the State Highway Commission has aided in the construction of the street within the city limits and relieved the city, is for the benefit of the city and in no way abridges the city's power and authority to condemn the land. *Raleigh v. Hatcher*, 220 N. C. 613, 18 S. E. (2d) 207 (1942).

Construed with Local Act.—Chapter 56, article 9 of the Acts of 1921 providing for local improvements of the streets of a city or incorporated town by a method of assessing the owners of abutting land, and this section, are to be construed together in pari materia. *Shute v. Monroe*, 187 N. C. 676, 123 S. E. 71 (1924).

Same—Exercise of Power by City.—Where the State Highway Commission orders a connecting link to be hard-surfaced, and the municipality voluntarily agrees to make the improvement, it is not required, under chapter 56, article 9, that a petition of the abutting owners of land thereon be made. This section gives the governing

body of the municipality power to make it an assessment district. *Shute v. Monroe*, 187 N. C. 676, 123 S. E. 71 (1924).

Street and Highway of Same Width.—This section applies only where the width of the street and the regular highway are the same. *Sechriest v. Thomasville*, 202 N. C. 108, 162 S. E. 212 (1932).

Power of City to Voluntarily Improve.—Where a city or incorporated town having three thousand inhabitants, or more, has a considerable portion of its streets hard-surfaced, the municipality may voluntarily assess and undertake the improvement of a street being a connecting link in the highway system. *Shute v. Monroe*, 187 N. C. 676, 123 S. E. 71 (1924).

Invalid Assessment May be Subsequently Validated.—Where an incorporated town, under authority of this section, levies an assessment against abutting property owners for street improvements in paving a strip on either side of a State highway running through the town, but such levies are made without a petition of the abutting owners as prescribed by § 160-82, the assessments are invalid but not void, and the legislature has the power to validate the assessments by subsequent legislative act. *Crutchfield v. Thomasville*, 205 N. C. 709, 172 S. E. 366 (1934).

Cited in *Long v. Randleman*, 199 N. C. 344, 154 S. E. 317 (1930).

§ 136-28. Letting of contracts to bidders after advertisement; enforcing claims against contractor by action on bond.—All contracts over five thousand dollars (\$5,000.00) that the Commission may let for construction, or any other kinds of work necessary to carry out the provisions of this chapter, shall be let, after public advertising, under rules and regulations to be made and published by the State High-

way Commission, to a responsible bidder, the right to reject any and all bids being reserved to the Commission; except that contracts for engineering or other kinds of professional or specialized services may be let after the taking and consideration of bids or proposals from not less than three responsible bidders without public advertisement.

No action shall be brought upon any bond given by any contractor of the Commission, by any laborer, materialman or other person until and after the completion of the work contracted to be done by the said contractor. Any laborer, materialman or other person having a claim against the said contractor and the bond given by such contractor, shall file a statement of the said claim with the contractor and with the surety upon his bond, and, in the event the surety is a corporation, with the general agent of such corporation, within the State of North Carolina, within six (6) months from the completion of the contract, and a failure to file such claim within said time shall be a complete bar against any recovery on the bond of the contractor and the surety thereon. Only one suit or action may be brought upon the said bond and against the said surety, which suit or action shall be brought in one of the counties in which the work and labor was done and performed and not elsewhere. The procedure pointed out in § 44-14 shall be followed. No surety shall be liable for more than the penalty of the bond. Any person entitled to bring an action shall have the right to require the Commission to furnish information as to when the contract is completed, and it shall be the duty of the Commission to give to any such person proper notice. If the full amount of the liability of the surety on said bond is insufficient to pay the said amount of all claims and demands, then, after paying the full amount due the Commission, the remainder shall be distributed pro rata among the claimants. Any claim of the Commission against the said bond and the surety thereon shall be preferred as against any cause of action in favor of any laborer, materialman or other persons and shall constitute a first lien or claim against the said bond and the surety thereon. (1921, c. 2, s. 15; 1923, c. 160, s. 3; C. S., s. 3846(v); 1925, cc. 260, 269; 1933, c. 172, s. 17; 1957, c. 65, s. 11; c. 1194, s. 1; 1963, c. 525.)

Editor's Note.—The 1923 amendment added the second paragraph which was rewritten by the 1925 amendment.

The first 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission" in the first paragraph, and the second 1957 amendment added the exception clause thereto. Section 2 of the second amendatory act provided that all contracts for engineering or other kinds of professional or specialized services which may have heretofore been made and entered into by the State Highway and Public Works Commission without public advertisement, which are otherwise regular and valid, are hereby validated.

The 1963 amendment substituted "five thousand dollars (\$5,000.00)" for "one thousand dollars" near the beginning of the first paragraph.

Section Prospective.—This section falls within the rule or presumption that the effect of the statute is to be prospective only, in the absence of an expressed or clearly implied intent to the contrary. *Overman & Co. v. Maryland Casualty Co.*, 193 N. C. 86, 136 S. E. 250 (1927). See *Independence Trust Co. v. Massachusetts, etc., Ins. Co.*, 190 N. C. 680, 130 S. E. 547 (1925).

"Other person," as used in this section, is not broad enough to take in any person having a claim against the contractor. The principle of *ejusdem generis* applies. *Ro-*

per Lbr. Co. v. Lawson, 195 N. C. 840, 143 S. E. 847 (1928).

Immunity of Contractor from Liability for Defect.—One constructing a roadway under contract with State Highway Commission did not share the immunity given that body by this section against liability for damages resulting from defective condition of the highway. *Thompson Caldwell Const. Co. v. Young*, 294 F. 145 (1923).

Under this section bonds are construed liberally for the protection of those who furnish labor and materials in the prosecution of public works. *Wiseman v. Lacy*, 193 N. C. 751, 138 S. E. 121 (1927), citing *Electric Co. v. Deposit Co.*, 191 N. C. 653, 132 S. E. 808 (1926).

Contract and Bond Are Construed Together in Favor of Surety.—In determining liability of surety on a contractor's bond for the building of a State highway, the contract and the bond of indemnity will be construed together strictly in favor of the surety. *Roper Lbr. Co. v. Lawson*, 195 N. C. 840, 143 S. E. 847 (1928).

Surety is Chargeable with Notice of Factors Affecting Risks.—In entering into the contract the surety is chargeable with notice, not only of the financial ability and integrity of the contractor, but also with notice as to whether he possesses the plant, equipment, and tools required in undertaking the particular work, or will be compelled to rent and hire the same or some

part thereof, all of which matters are factors to be considered in determining the risk and upon which the surety fixes the premiums exacted for executing the bond. *Wiseman v. Lacy*, 193 N. C. 751, 138 S. E. 121 (1927).

Surety Is Substitute for Lien.—The General Assembly has, by the enactment of § 44-14 and this section, given to laborers and materialmen engaged in public construction a substantial equivalent to the lien given laborers and materialmen engaged in private construction. The surety on the bond is, for practical purposes, the substitute for the lien. *American Bridge Division United States Steel Corp. v. Brinkley*, 255 N. C. 162, 120 S. E. (2d) 529 (1961).

Commission Has Priority in Payments by Surety.—By the terms of this section the Highway Commission is entitled to priority in the monies to be paid by the surety company. After it has been paid, the balance should be paid to claimants who establish their claims. *American Bridge Division United States Steel Corp. v. Brinkley*, 255 N. C. 162, 120 S. E. (2d) 529 (1961).

Extent of Surety's Liability.—The surety on a contractor's bond for the building of a public road or highway is presumed to have acquainted itself with the character of the road contracted for by its principal, and the local conditions that would affect the cost of its construction, and where its bond includes payment by the contractor of labor and material to be employed or used therein, it is liable to one who has rented to the contractor a steam shovel, boiler, etc., necessary to the construction of the highway under local existing conditions. The renting of such machines was but the substitution of mechanical power for manual labor. *Wiseman v. Lacy*, 193 N. C. 751, 138 S. E. 121 (1927).

Laborers, etc., Having No Statutory Lien.—The surety bond given to the State Highway Commission by a contractor for the construction of a highway under the provisions of this section contemplates the protection of laborers and materialmen who have no statutory lien. *Roper Lbr. Co. v. Lawson*, 195 N. C. 840, 143 S. E. 847 (1928).

Materials and Supplies Protected by Surety's Bond.—Groceries and provisions furnished to the contractor and necessarily consumed in and about the construction

of the work, foodstuffs for the horses and mules furnished to the contractor and necessarily consumed in and about the construction of the work, and gas and oil necessarily consumed in and about the construction of the work, and for which the contractor is liable, are protected by the surety's bond. *Overman & Co. v. Maryland Cas. Co.*, 193 N. C. 86, 136 S. E. 250 (1927).

Candies, cigars, cigarettes, tobacco, ginger ale and other soft drinks sold by a contractor at a laborer's camp in constructing a highway and charged in the payroll against the laborers buying them, are not necessities under the terms of the surety bond on the contract. *Overman & Co. v. Maryland Cas. Co.*, 193 N. C. 86, 136 S. E. 250 (1927).

Loss Held Covered by Bond.—In an action by a prime contractor on a road construction contract to recover on the bond of a subcontractor given pursuant to this section for sums that the former was required to pay for supplies furnished to the latter, who had become bankrupt, the prime contractor's loss was held covered by the bond. *Saint Paul Mercury Indemnity Co. v. Wright Contr. Co.*, 250 F. (2d) 758 (1958).

One action only shall be instituted against the bonding company. *Cavarnos-Wright Co. v. Blythe Bros. Co.*, 217 N. C. 583, 8 S. E. (2d) 924 (1940).

Allegation of Compliance.—Where the complaint in an action on the bond given by a contractor for construction of a highway alleges that a statement of the claim against the surety on the bond was filed with the defendant surety company within six months after the project was completed, it is a sufficient allegation of compliance with the provisions of this section. *Bank of Wadesboro v. Northwestern Casualty, etc., Co.*, 202 N. C. 148, 162 S. E. 236 (1932).

Venue of Suit.—See *Independence Trust Co. v. Massachusetts, etc., Ins. Co.*, 190 N. C. 680, 130 S. E. 547 (1925).

Applied in *Wright Contracting Co. v. Saint Paul Mercury Indemnity Co.*, 151 F. Supp. 179 (1957).

Cited in *Overman & Co. v. Great American Indemnity Co.*, 199 N. C. 736, 155 S. E. 730 (1930); *Southern Surety Co. v. Plott*, 28 F. (2d) 698 (1928); *Gulf States Creosoting Co. v. Loving*, 120 F. (2d) 195 (1941).

§ 136-29. Adjustment of claims.—(a) Upon the completion of any contract for the construction of any State highway awarded by the State Highway Commission to any contractor, if the contractor fails to receive such settlement as he claims to be entitled to under his contract, he may, within sixty (60) days from the time of receiving his final estimate, submit to the Director of the State Highway Commission a written and verified claim for such amount as he deems himself entitled to under the said contract setting forth the facts upon which said claim is based. In addition, the claimant, either in person or through counsel, may appear before the Director of the State Highway Commission and present any additional facts and arguments in support of his claim. Within ninety (90) days from the

receipt of the said written claim the Director of the Highway Commission shall make an investigation of said claim and with the approval of the Highway Commission may allow all or any part or may deny said claim and shall have the authority to reach a compromise agreement with the contractor and shall notify the contractor in writing of his decision.

(b) As to such portion of the claim as is denied by the Director of the State Highway Commission, the contractor may, within six (6) months from receipt of said decision, institute a civil action for such sum as he claims to be entitled to under said contract by the filing of a verified complaint and issuance of summons in the Superior Court of Wake County or in the superior court of any county wherein the work under said contract was performed. The procedure shall be the same as in all civil actions except as herein and as hereinafter set out.

(c) All issues of law and fact and every other issue shall be tried by the judge, without a jury; provided that the matter may be referred in the instances and in the manner provided for in article 20 of chapter 1 of the General Statutes.

(d) The submission of the claim to the Director of the State Highway Commission within the time and as set out in subsection (a) of this section and the filing of an action in the superior court within the time as set out in subsection (b) of this section shall be a condition precedent to bringing such an action under this section and shall not be a statute of limitations.

(e) The provisions of this section shall be deemed to enter into and form a part of every contract entered into between the State Highway Commission and any contractor, and no provision in said contracts shall be valid that is in conflict herewith. (1939, c. 318; 1947, c. 530; 1957, c. 65, s. 11; 1963, c. 667.)

Editor's Note.—The 1947 amendment rewrote the former third sentence which provided for a board of review.

The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

The 1963 amendment rewrote this section. For comment on this section prior to the

1963 amendment, see 17 N. C. Law Rev. 340.

Jurisdiction of Superior Court.—For case construing jurisdiction and scope of authority of superior court prior to the 1963 amendment, see *Ballenger Paving Co. v. North Carolina State Highway Comm.*, 258 N. C. 691, 129 S. E. (2d) 245 (1963).

§ 136-30. Uniform guide and warning signs on highways.—The State Highway Commission is hereby authorized to classify, designate and mark both intrastate and interstate highways, including connecting streets in incorporated towns and cities, lying within this State and to provide a system of marking and signing such highways. Highways shall be distinctly marked with some standard, uniform design and the numbers thereon shall correspond with the numbers given the various routes by the Commission and shown on official maps issued by the Commission. Other guide signs and warning signs shall also be of uniform design. The system of marking and signing highways shall correlate with and so far as possible conform to the system adopted in other states.

The Commission shall have the power to control all signs within the right of way of State highways.

The Commission may erect proper and uniform signs directing persons to roads and places of importance. (1921, c. 2, ss. 9(a), 9(b); C. S., ss. 3846(q), 3846(r); 1927, c. 148, s. 54; 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Cross Reference.—See note to § 136-32.
Editor's Note.—See 13 N. C. Law Rev. 101.

The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

§ 136-31. Local traffic signs.—Local authorities in their respective jurisdictions shall cause appropriate signs to be erected and maintained, designating residence and business districts, highway and steam or interurban railway grade crossings and such other signs as may be deemed necessary to carry out the provisions of §§ 136-30 to 136-33. Local authorities shall erect appropriate signs giving notice of special, local parking and other regulations. (1927, c. 148, s. 55.)

§ 136-32. Other than official signs prohibited.—No unauthorized person shall erect or maintain upon any highway any warning or direction sign, marker, signal or light or imitation of any official sign, marker, signal or light erected under the provisions of §§ 136-30 and 136-31, except in cases of emergency. No person shall erect or maintain upon any highway any traffic or highway sign or signal bearing thereon any commercial advertising: Provided, nothing in this section shall be construed to prohibit the erection or maintenance of signs, markers, or signals bearing thereon the name of an organization authorized to erect the same by the State Highway Commission or by any local authority referred to in § 136-31. Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor and punished in the discretion of the court. The Commission may remove any signs erected without authority. (1921, c. 2, s. 9(b); C. S., s. 3846(r); 1927, c. 148, ss. 56, 58; 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

Commission's Determination Exclusive.—The Highway Commission's determina-

tion of what signs should be erected for the information of the traveling public was exclusive once it authorized the opening of a road for public use. Gilliam v. Propst Constr. Co., 256 N. C. 197, 123 S. E. (2d) 504 (1962).

§ 136-32.1. Misleading signs prohibited.—No person shall erect or maintain within one hundred feet of any highway right of way any warning or direction sign or marker of the same shape, design, color and size of any official highway sign or marker erected under the provisions of G. S. 136-30 and 136-31, or otherwise so similar to an official sign or marker as to appear to be an official highway sign or marker. Any person who violates any of the provisions of this section is guilty of a misdemeanor and shall be punished by a fine or imprisonment, or both, in the discretion of the court. (1955, c. 231.)

§ 136-32.2. Placing blinding, deceptive or distracting lights unlawful.—(a) If any person, firm or corporation shall place or cause to be placed any lights, which are flashing, moving, rotating, intermittent or steady spotlights, in such a manner and place and of such intensity:

- (1) Which, by the use of flashing or blinding lights, blinds, tends to blind and effectively hampers the vision of the operator of any motor vehicle passing on a public highway; or
- (2) Which involves red, green or amber lights or reflectorized material and which resembles traffic signal lights or traffic control signs; or
- (3) Which, by the use of lights, reasonably causes the operator of any motor vehicle passing upon a public highway to mistakenly believe that there is approaching or situated in his lane of travel some other motor vehicle or obstacle, device or barricade, which would impede his traveling in such lane;

[he or it] shall be guilty of a misdemeanor and shall upon conviction be fined not more than fifty dollars (\$50.00) or imprisoned not more than thirty (30) days or both.

(b) Each ten (10) days during which a violation of the provisions of this section is continued after conviction therefor shall be deemed a separate offense.

(c) The provisions of this section shall not apply to any lights or lighting devices erected or maintained by the State Highway Commission or other properly constituted State or local authorities and intended to effect or implement traffic control and safety. Nothing contained in this section shall be deemed to prohibit the otherwise reasonable use of lights or lighting devices for advertising or other lawful purpose when the same do not fall within the provisions of subdivisions (1) through (3) of subsection (a) of this section.

(d) The enforcement of this section shall be the specific responsibility and duty of the Department of Motor Vehicles by and through the State Highway Patrol in addition to all other law enforcement agencies and officers within this State; pro-

vided, however, no warrant shall issue charging a violation of this section unless the violation has continued for ten (10) days after notice of the same has been given to the person, firm or corporation maintaining or owning such device or devices alleged to be in violation of this section. (1959, c. 560.)

Editor's Note.—In subsection (a), following subdivision (3), the words "he or it" have been inserted in brackets, it appearing that the legislature inadvertently

omitted these words.

The act inserting this section is effective as of Oct. 1, 1959.

§ 136-33. Injuring or removing signs.—Any person who shall deface, injure, knock down or remove any sign posted as provided in §§ 136-30 and 136-31 shall be guilty of a misdemeanor. (1927, c. 148, s. 57.)

§ 136-33.1. Signs for protection of cattle.—Upon written request of any owner of more than five head of cattle, the State Highway Commission shall erect appropriate and adequate signs on any road or highway under the control of the State Highway Commission, such signs to be so worded, designed and located as to give adequate warning of the presence and crossing of cattle. Such signs shall be located at points agreed upon by the owner and the State Highway Commission at points selected to give reasonable warning of places customarily or frequently used by the cattle of said owner to cross said road or highway, and no one owner shall be entitled to demand the placing of signs at more than one point on a single or abutting tracts of land. (1949, c. 812; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment for "State Highway and Public Works substituted "State Highway Commission" Commission."

§ 136-33.2. Signs marking beginning and ending of speed zones.—Whenever speed zones are established by an agency of the State having authority to establish such speed zones, there shall be erected or posted a sign of adequate size at the beginning point of such speed zone designating the zone and the speed limit to be observed therein, and there shall be erected or posted at the end of such speed zone an adequate sign indicating the end of such speed zone which sign shall also indicate such different speed limit as may then be observed.

At least six hundred (600) feet in advance of the beginning of any speed zone established by any agency of the State authorized to establish the same, there shall be erected a sign of adequate size which shall bear the legend "Reduce Speed Ahead." (1955, c. 647.)

§ 136-34. State Highway Commission authorized to furnish road equipment to municipalities.—The State Highway Commission is hereby authorized to furnish municipalities road maintenance equipment to aid such municipalities in the maintenance of streets for which no State highway funds are provided, upon such rental agreement as may be agreed upon by the State Highway Commission and the said municipality. Such rental, however, is to be at least equal to the cost of operation, plus wear and tear on such equipment; and the State Highway Commission shall not be required to furnish equipment when to do so would interfere with the maintenance of the streets and highways under the control of said Commission. (1941, c. 299; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment for "State Highway and Public Works substituted "State Highway Commission" Commission."

§ 136-35. Co-operation with other states and federal government.—It shall also be the duty of the State Highway Commission, where possible, to co-operate with the state highway commissions of other states and with the federal government in the correlation of roads so as to form a system of intercounty, interstate, and national highways. (1915, c. 113, s. 12; C. S., s. 3584; 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment for "State Highway and Public Works substituted "State Highway Commission" Commission."

§ 136-36: Repealed by Session Laws 1951, c. 260, s. 4.

§ 136-37: Repealed by Session Laws 1959, c. 687, s. 5.

§§ 136-38 to 136-41: Repealed by Session Laws 1951, c. 260, s. 4.

§ 136-41.1. **Appropriation to municipalities; allocation of funds.**—In addition to the amounts to be expended under the preceding section, there is hereby annually appropriated out of the State Highway and Public Works Fund a sum equal to the amount that was produced during the preceding fiscal year by $\frac{1}{2}$ of one-cent tax on each gallon of motor fuel taxed by §§ 105-434 and 105-435, to be allocated in cash on or before October first each year after March 15, 1951, to the cities and towns of the State in accordance with the following formula:

One-half of said fund shall be distributed among the several eligible municipalities of the State in the percentage proportion that the population of each eligible municipality bears to the total population of all eligible municipalities as indicated by the latest certified federal decennial census, and one-half of said fund shall be distributed among the several eligible municipalities of the State in the percentage proportion that the mileage of public streets in each eligible municipality which do not form a part of the highway system bears to the total mileage of public streets in all eligible municipalities which do not constitute a part of the State highway system.

It shall be the duty of the mayor of each municipality to report to the State Highway Commission such information as it may request for its guidance in determining the eligibility of each municipality to receive funds by virtue of §§ 136-41.1 and 136-41.2 and in determining the amount of allocation to which each is entitled. Upon failure of any municipality to make such report within the time prescribed by the State Highway Commission, the State Highway Commission may disregard such defaulting unit in making said allotment.

The funds to be allocated under this section shall be paid in cash to the various eligible municipalities on or before October 1 each year after March 15, 1951. Provided that eligible municipalities are authorized within the discretion of their governing bodies to enter into contracts for the purpose of maintenance, repair, construction, reconstruction, widening, or improving streets of such municipalities at any time after January 1 of any calendar year in total amounts not to exceed ninety per cent (90%) of the amount received by such municipality during the preceding fiscal year, in anticipation of the receipt of funds under this section during the next fiscal year, to be paid for out of such funds when received.

No allocation to cities and towns shall be made under the provisions of this section from the one cent per gallon additional tax on gasoline imposed by chapter 1250 of the Session Laws of 1949, unless and until said additional one cent per gallon gasoline tax produces funds which are not needed for or committed by said chapter 1250 of the Session Laws of 1949, to the payment of the principal of or the interest on the secondary road bonds issued pursuant to the provisions of said chapter 1250 of the Session Laws of 1949. The State Highway Commission is hereby authorized to withhold each year an amount not to exceed 1% of the total amount appropriated in § 136-41.1 for the purpose of correcting errors in allocations: Provided, that the amount so withheld and not used for correcting errors will be carried over and added to the amount to be allocated for the following year.

The word "street" as used in this section is hereby defined as any public road maintained by a municipality and open to use by the general public, and having an average width of not less than sixteen (16) feet. In order to obtain the necessary information to distribute the funds herein allocated, the State Highway Commission may require that each municipality eligible to receive funds under §§ 136-41.1 and 136-41.2 submit to it a statement, certified by a registered engineer or surveyor of the total number of miles of streets in such municipality. The State Highway Commission may in its discretion require the certification of mileage on a biennial basis. (1951, c. 260, s. 2; c. 948, ss. 2, 3; 1953, c. 1127; 1957, c. 65, s. 11; 1963, c. 854, ss. 1, 2.)

Local Modification.—Henderson: 1957, c. 1181.

Cross Reference.—As to estimate of population authorizing participation in State-collected funds, see § 160-4.1.

Editor's Note.—The 1953 amendment added the proviso to the fourth paragraph.

The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

The 1963 amendment, effective Jan. 1, 1964, redesignated this section, which was originally § 136-41.2, as § 136-41.1. Former § 136-41.1 was repealed by Session Laws 1959, c. 687, s. 5. The 1963 amendment also deleted the former first sentence of the third paragraph, which read as follows: "No municipality shall be eligible to re-

ceive funds under §§ 136-41.1 and 136-41.2 unless it has within the four-year period next preceding the annual allocation of funds conducted an election for the purpose of electing municipal officials and currently imposes an ad valorem tax or provides other funds for the general operating expenses of the municipality."

Section 3½ of the 1963 amendatory act provides: "The provisions of this act shall not apply to any municipality incorporated prior to January 1, 1945."

The correct name of the Fund mentioned in this section is "State Highway Fund." See §§ 105-436, 136-16.

Cited in Winston-Salem v. Southern Ry. Co., 248 N. C. 637, 105 S. E. (2d) 37 (1958).

§ 136-41.2. Eligibility for funds; municipalities incorporated since January 1, 1945.—(a) No municipality shall be eligible to receive funds under G. S. 136-41.1 unless it has conducted the most recent election required by its charter or the general law, whichever is applicable, for the purpose of electing municipal officials. The literal requirement that the most recent required election shall have been held may be waived only:

(1) Where the members of the present governing body were appointed by the General Assembly in the act of incorporation and the date for the first election of officials under the terms of that act has not arrived; or,

(2) Where validly appointed or elected officials have advertised notice of election in accordance with law, but have not actually conducted an election for the reason that no candidates offered themselves for office.

(b) No municipality shall be eligible to receive funds under G. S. 136-41.1 unless it has levied an ad valorem tax for the current fiscal year of at least five cents (5¢) on the one hundred dollars (\$100.00) valuation upon all taxable property within its corporate limits, and unless it has actually collected at least fifty per cent (50%) of the total ad valorem tax levied for the preceding fiscal year; provided, however, that, for failure to have collected the required percentage of its ad valorem tax levy for the preceding fiscal year:

(1) No municipality making in any year application for its first annual allocation shall be declared ineligible to receive such allocation; and

(2) No municipality shall be declared ineligible to receive its share of the annual allocation to be made in the year 1964.

(c) No municipality shall be eligible to receive funds under G. S. 136-41.1 unless it has formally adopted a budget ordinance in substantial compliance with G. S. 160-410.3, showing revenue received from all sources, and showing that funds have been appropriated for at least two of the following municipal services: Water distribution; sewage collection or disposal; garbage and refuse collection or disposal; fire protection; police protection; street maintenance, construction, or right of way acquisition; or street lighting.

(d) The provisions of this section shall not apply to any municipality incorporated prior to January 1, 1945. (1963, c. 854, ss. 3, 3½.)

Editor's Note.—The act inserting this section is made effective as of Jan. 1, 1964. Former § 136-41.2 was redesignated 136-41.1 by Session Laws 1963, c. 854, s. 2.

Cited in Winston-Salem v. Southern Ry.

Co., 248 N. C. 637, 105 S. E. (2d) 37 (1958); Great American Ins. Co. v. Johnson, 257 N. C. 367, 126 S. E. (2d) 92 (1962).

§ 136-41.3. Use of funds; records and annual statement; contracts for maintenance, etc., of streets.—The funds allocated to cities and towns under the provisions of § 136-41.2 shall be expended by said cities and towns only for the purpose of maintaining, repairing, constructing, reconstructing or widening of any

street or public thoroughfare including bridges, drainage, curb and gutter, and other necessary appurtenances within the corporate limits of the municipality or for meeting the municipality's proportionate share of assessments levied for such purposes.

Each municipality receiving funds by virtue of §§ 136-41.1 and 136-41.2 shall maintain a separate record of accounts indicating in detail all receipts and expenditures of such funds. It shall be unlawful for any municipal employee or member of any governing body to authorize, direct, or permit the expenditure of any funds accruing to any municipality by virtue of §§ 136-41.1 and 136-41.2 for any purpose not herein authorized. Any member of any governing body or municipal employee shall be personally liable for any unauthorized expenditures. On or before the first day of August each year, the treasurer, auditor, or other responsible official of each municipality receiving funds by virtue of §§ 136-41.1 and 136-41.2 shall file a statement under oath with the chairman of the State Highway Commission showing in detail the expenditure of funds received by virtue of §§ 136-41.1 and 136-41.2 during the preceding year and the balance on hand.

In the discretion of the local governing body of each municipality receiving funds by virtue of §§ 136-41.1 and 136-41.2 it may contract with the State Highway Commission to do the work of maintenance, repair, construction, reconstruction, widening or improving the streets in such municipality; or it may let contracts in the usual manner as prescribed by the General Statutes to private contractors for the performance of said street work; or may undertake the work by force account. The State Highway Commission within its discretion is hereby authorized to enter into contracts with municipalities for the purpose of maintenance, repair, construction, reconstruction, widening or improving streets of municipalities. And the State Highway Commission in its discretion may contract with any city or town which it deems qualified and equipped so to do that the city or town shall do the work of maintaining, repairing, improving, constructing, reconstructing, or widening such of its streets as form a part of the State highway system.

In the case of each eligible municipality having a population of less than 5,000 as defined in G. S. 136-41.2, the State Highway Commission shall upon the request of such municipality made by official action of its governing body, on or prior to June 1, 1953, or June 1 in any year thereafter, for the fiscal year beginning July 1, 1953, and for the years thereafter do such street construction, maintenance, or improvement on non-system streets as the town may request within the limits of the current or accrued payments made to the municipality under the provisions of G. S. 136-41.2.

In computing the costs, the Commission may use the same rates for equipment, rental, labor, materials, supervision, engineering and other items, which the Commission uses in making charges to one of its own department or against its own department, or the Commission may employ a contractor to do the work, in which case the charges will be the contract cost plus engineering and inspection. The municipality is to specify the location, extent, and type of the work to be done, and shall provide the necessary rights of way, authorization for the removal of such items as poles, trees, water and sewer lines as may be necessary, holding the Commission free from any claim by virtue of such items of cost and from such damage or claims as may arise therefrom except from negligence on the part of the Commission, its agents, or employees.

If a municipality elects to bring itself under the provisions of the two preceding paragraphs, it shall enter into a two-year contract with the State Highway Commission and if it desires to dissolve the contract at the end of any two-year period it shall notify the State Highway Commission of its desire to terminate said contract on or before April 1st of the year in which such contract shall expire; otherwise, said contract shall continue for an additional two-year period, and if the municipality elects to bring itself under the provisions of the two preceding paragraphs and thereafter fails to pay its account to the Commission for the fiscal year ending June 30th, by August 1 following the fiscal year, then the Commission shall apply the said

municipality's allocation under G. S. 136-41.2 to this account until said account is paid and the Commission shall not be obligated to do any further work provided for in the two preceding paragraphs until such account is paid.

Section 143-129 of the General Statutes relating to the procedure for letting of public contracts shall not be applicable to contracts undertaken by any municipality with the State Highway Commission in accordance with the provisions of the three preceding paragraphs. (1951, c. 260, s. 3; c. 948, s. 4; 1953, c. 1044; 1957, c. 65, s. 11.)

Editor's Note.—The 1953 amendment added the last four paragraphs in this section.

The 1957 amendment substituted "State Highway Commission" for "State High-

way and Public Works Commission."

Cited in *Winston-Salem v. Southern Ry. Co.*, 248 N. C. 637, 105 S. E. (2d) 37 (1958); *Great American Ins. Co. v. Johnson*, 257 N. C. 367, 126 S. E. (2d) 92 (1962).

§ 136-42. Markers on highway; co-operation of Commission.—The State Highway Commission is hereby authorized to co-operate with the State Department of Archives and History in marking historic spots along the State highways. (1927, c. 226, s. 1; 1933, c. 172, s. 17; 1943, c. 237; 1957, c. 65, s. 11.)

Editor's Note.—By virtue of Session Laws 1943, c. 237, the "State Department of Archives and History" has been substituted for "North Carolina Historical Com-

mission."

The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

§ 136-43. Historical marker program.—The State Highway Commission is hereby authorized to expend not more than ten thousand dollars (\$10,000.00) a year for the purpose of purchasing historical markers, to be erected by the State Highway Commission on sites selected by the State Department of Archives and History which Department shall also prepare the inscriptions and deliver the completed markers to the State Highway Commission. This expenditure is hereby declared to be a valid expenditure of State highway maintenance funds. No provision in this section shall be construed to prevent the expenditure of any federal highway funds that may be available for this purpose. (1935, c. 197; 1943, c. 237; 1951, c. 766; 1955, c. 543, s. 2; 1957, c. 65, s. 11.)

Editor's Note.—The 1955 amendment, effective July 1, 1955, rewrote this section.

The 1957 amendment substituted "State

Highway Commission" for "State Highway and Public Works Commission."

§ 136-43.1. Procedure for correction and relocation of historical markers.—Any person, firm or corporation who has knowledge or information, supported by historical data, books, records, writings, or other evidence, that any historical marker has been erected at an erroneous or mistaken site, or that the inscription appearing on any historical marker contains erroneous or mistaken information, shall have the privilege of presenting such knowledge or information and supporting evidence to the advisory committee described in the preamble of Public Laws 1935, c. 197 for its consideration. Upon being informed that any person desires to present such information, the Director of the Department of Archives and History shall notify such person of the date, place and time of the next meeting of the advisory committee. Any person, firm or corporation desiring to present such information to the advisory committee shall be allowed to appear before the committee for that purpose.

If, after considering the information and evidence presented, the advisory committee should find that any historical marker has been erected on an erroneous or mistaken site, or that erroneous or mistaken information is contained in the inscription appearing on any historical marker, it shall so inform the Department of Archives and History and the Department of Archives and History shall cause such marker to be relocated at the correct site, or shall cause the erroneous or mistaken inscription to be corrected, or both as the case may be. (1961, c. 267.)

§ 136-44. Maintenance of grounds at home of Nathaniel Macon and grave of Anne Carter Lee.—The Highway Commission is hereby authorized and di-

rected through the highway supervisor of the Warren County District, to clean off and keep clean the premises and grounds at the old home of Nathaniel Macon, known as "Buck Springs," which are owned by the county of Warren, and also to look after the care and keeping the grounds surrounding the grave of Miss Anne Carter Lee, daughter of General Robert E. Lee, in Warren County. (1939, c. 38; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment "Highway and Public Works Commission" substituted "Highway Commission" for "Highway Commission."

ARTICLE 3.

State Highway System.

Part. 1. Highway System.

§ 136-45. General purpose of law; control, repair and maintenance of highways.—The general purpose of the laws creating the State Highway Commission is that said Commission shall take over, establish, construct, and maintain a State-wide system of hard-surfaced and other dependable highways running to all county seats, and to all principal towns, State parks, and principal State institutions, and linking up with state highways of adjoining states and with national highways into national forest reserves by the most practical routes, with special view of development of agriculture, commercial and natural resources of the State, and for the further purpose of permitting the State to assume control of the State highways, repair, construct, and reconstruct and maintain said highways at the expense of the entire State, and to relieve the counties and cities and towns of the State of this burden. (1921, c. 2, s. 2; C. S., s. 3846(a); 1943, c. 410; 1957, c. 65, s. 11.)

Editor's Note.—The 1943 amendment rewrote the first part of this section.

The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

The statutes in Parts 1 and 2 of this article reflect the growth and culmination of general State control of the public roads, and must be read in this light. Sections 136-45 through 136-47 are codified from the act which authorized the State Highway System of 1921—the first important step. Sections 136-48 through 136-50, enacted in 1927, and repealed by 1943, c. 410, authorized an extension of this System. Sections 136-51 through 136-53 authorized the assumption of control by the State of the county public roads. Public Laws 1933, c. 172, s. 32, changed "State Highway Commission" to "State Highway and Public Works Commission."

As to the general policy of the State as to highway, see *Young v. Board*, 190 N. C. 52, 128 S. E. 401 (1925).

Laws Repealed.—Former §§ 3580-3593 of the Consolidated Statutes were repealed by this article insofar as the former conflicted with the latter and under the latter power is conferred on the State Highway Commission to take over county highways as a part of the highway system upon such terms and agreements with the county commissioners as may be made by them as authorized by this article. *Lassiter v. Board*, 188 N. C. 379, 124 S. E. 738 (1924).

Statutes Construed in Pari Materia.—The statute relating to the creation, maintenance, etc., of a State-wide system of

public roads, and the amendatory act providing for the taking over of county highways for State maintenance are to be construed together in *pari materia*. *Board of Com'rs v. State Highway Comm.*, 195 N. C. 26, 141 S. E. 539 (1928).

The purpose of the act of 1921 was to encourage co-operation between the Highway Commission and the county authorities. *Young v. Board*, 190 N. C. 52, 128 S. E. 401 (1925).

The Highway Commission is an administrative body. *Cameron v. State Highway Comm.*, 188 N. C. 84, 123 S. E. 465 (1924).

Broad Discretion Given.—This section and § 136-18, subdivision (2), give broad discretionary powers to the State Highway Commission in establishing, altering and changing the route of county roads that are or are proposed to be absorbed in the State highway system of public roads. *Road Comm. v. State Highway Comm.*, 185 N. C. 56, 115 S. E. 886 (1923).

Control of Discretion as to Change of Highway.—The State Highway Commission, neither by contract nor otherwise, can be controlled beforehand in the exercise of its discretion, conferred on it by statute, as to the change of location of a public highway. *Johnson v. Board*, 192 N. C. 561, 135 S. E. 618 (1926).

Change of Route as Violating Rights of Owners.—Those who have acquired property along the "proposed" route, as shown in connection with the consideration by the legislature of the bill which became enacted into what is now this article, acted

with implied notice of the powers conferred upon the Commission in changing the route, and cannot maintain the position that they have been deprived of the due-process-of-law provision in the Constitution, whether of a vested right or otherwise. *Cameron v. State Highway Comm.*, 188 N. C. 84, 123 S. E. 465 (1924).

Liability of Commission for Torts, etc.—The State Highway Commission is an unincorporated agency of the State to perform specific duties in relation to the highways of the State and is not liable in damages for the torts of its subagencies and an action may not be maintained against it or a county acting thereunder in trespassing upon the lands of a private owner, or for the faulty construction of its drains, or the taking of a part of the lands of such owner for the use of the highway, the remedy prescribed by the statute being exclusive. *Latham v. State Highway Comm.*, 191 N. C. 141, 131 S. E. 385 (1926).

Liability for Defects in Highway.—Counties in North Carolina are not liable for damage resulting from defective condition of their highways, being political agencies of the State; nor are county commissioners individually liable, unless they acted corruptly or of malice. *Thompson Caldwell Const. Co. v. Young*, 294 F. 145 (1923).

Power of County Commissioners and Highway Commission to Contract.—The boards of county commissioners and the State Highway Commission are vested with powers to enter into contracts and agreements for the construction of roads forming a part of the State highway system. *Young v. Board*, 190 N. C. 52, 128

S. E. 401 (1925).

Actions in Regard to Condemnation.—The State Highway Commission is an unincorporated agency of the State, charged with the duty of exercising certain governmental functions, and like the State may only be sued by a citizen when authority is granted by the General Assembly, and the methods prescribed for the entertainment of such an action are exclusive. While the various acts creating the State Highway Commission and prescribing its powers and duties do not declare in so many words that it may "sue and be sued," it sufficiently appears from the language of the statutes that in the matter of condemnation of land for highway purposes, and with respect to the method of arriving at compensation therefor, right of action lies in the manner set out by the statutes, and the procedure prescribed is open to the property owner as well as to the Highway Commission. *Yancey v. North Carolina State Highway, etc., Comm.*, 222 N. C. 106, 22 S. E. (2d) 256 (1942).

Injunction.—The action of the State Highway Commission in building the highways and bridges of the State is of public interest and equity will not enjoin them in this work when injury by flooding lands may probably result in the future, there being an adequate remedy at law. *Greenville v. State Highway Comm.*, 196 N. C. 226, 145 S. E. 31 (1928).

Quoted in *C. C. T. Equipment Co. v. Hertz Corp.*, 256 N. C. 277, 123 S. E. (2d) 802 (1962).

Cited in *Parker v. State Highway Comm.*, 195 N. C. 783, 143 S. E. 871 (1928).

§ 136-46. Establishment of system of State highways; work leading to hard-surfaced construction.—The purpose and intent of chapter two of the Public Laws of 1921 is to establish a system of State highways for the State hard-surfacing said highways as rapidly as possible, and maintaining the entire system of said highways in the most approved manner as outlined in that act. Work on the various links in the State highway system shall be of such a character as will lead to ultimate hard-surfaced construction as rapidly as money, labor, and materials will permit, and to a State system of durable hard-surfaced, all-weather roads, connecting the various county seats, principal towns, and cities. (1921, c. 2, s. 3; C. S., s. 3846(b).)

§ 136-47. Routes and maps; objections; changes.—The designation of all roads comprising the State highway system as proposed by the State Highway Commission shall be mapped, and there shall be publicly posted at the courthouse door in every county in the State a map of all the roads in such county in the State system, and the board of county commissioners or county road-governing body of each county, or street governing body of each city or town in the State shall be notified of the routes that are to be selected and made a part of the State system of highways; and if no objection of protest is made by the board of county commissioners of the county, road-governing body of any county, or street-governing body of any city or town in the State within sixty days after the notification before mentioned, then and in that case the said roads or streets, to which no objections are made, shall be and constitute links or parts of the State highway system. If any objections are made by the board of county commissioners or county road-governing body of any

county or street-governing body of the city or town, the whole matter shall be heard and determined by the State Highway Commission in session, under such rules and regulations as may be laid down by the Commission, notice of the time and place of hearing to be given by the Commission at the courthouse door in the county, and in some newspaper published in the county, at least ten days prior to the hearing, and the decision of the Commission shall be final. A map showing the proposed roads to constitute the State highway system is attached to chapter two of the Public Laws of one thousand nine hundred and twenty-one and made a part hereof. The roads so shown can be changed, altered, added to or discontinued by the Commission: Provided, no roads shall be changed, altered or discontinued so as to disconnect county seats, principal towns, State or national parks or forest reserves, principal State institutions, and highway systems of other states. The rights of way to all roads taken over under this section shall be not less than thirty (30) feet: Provided, that no toll road shall be taken over under this section unless by agreement or condemnation as herein provided. (1921, c. 2, s. 7; C. S., s. 3846(c); 1933, c. 172, s. 17; 1943, c. 410; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

The effect of the decisions cited below was modified by §§ 136-54 through 136-59.

Section Construed with § 136-18.—Section 136-18 giving the Commission broad and comprehensive discretionary powers in the adoption of routes, should be construed in pari materia with this section, which limits the discretion conferred in the former section, among other things, in respect to routes between "county seats, principal towns, etc.," according to a map referred to; and as to those matters particularly mentioned in this section the discretion was taken away from the Commission by express statutory provision. *Cameron v. State Highway Comm.*, 188 N. C. 84, 123 S. E. 465 (1924).

Power to Change Route.—Where the Commission, in pursuance of § 136-47 have, as required, posted at the courthouse door of a county a map showing the proposed route, and the county roads to be taken, the limitation of sixty days expressed in the statute is upon the time allowed the county to object; and a subsequent change made by the State Highway Commission in the proposed route prior to the time of building the highway is not reviewable by the court in the absence of an abuse by the Commission of the discretionary power conferred on it by the statute. *Road Comm. v. State Highway Comm.*, 185 N. C. 56, 115 S. E. 886 (1923).

The map referred to in this section as a "proposed" route of the State highway system, by placing certain towns along its proposed route, does not affect the discretionary authority of the Highway Commission in locating the highway between county seats, or prevent the Commission from changing the route from them, but its determination is reviewable by the courts as a mixed question of law and fact, whether the change decided upon goes by the principal towns as required by the statute.

Cameron v. State Highway Comm., 188 N. C. 84, 123 S. E. 465 (1924).

Same—After Vote Taken by County.—Where the State Highway Commission has taken over a certain public road within a county, as a link in the State system of public highways, and the county in which it is situate has contracted to loan the State Commission a certain amount of money to be expended on its improvement, subject to approval of the voters in issuing bonds for the purpose, and there is nothing in the contract that would require the route of the existing road to continue as it then was laid out, the discretionary power vested in the State Highway Commission as to changing the route, vesting in them by statute, will not be interfered with by the courts, at the suit of the taxpayers residing in a corporated or unincorporated town, contending that they would not have voted for the bond issue except upon representation made to them that the then existing route would not be changed. *Johnson v. Board*, 192 N. C. 561, 135 S. E. 618 (1926).

Presumption as to Posting of Map.—It is presumed on appeal, when the record is silent in relation thereto, that the Commission made publication of the proposed adoption of a link in the State highway system, by posting the map thereof at the county seat, etc., as the law requires. *Newton v. State Highway Comm.*, 194 N. C. 159, 138 S. E. 601 (1927).

Change from Route Finally Adopted.—The Commission is not authorized by statute to make an entire change of route in its system of State highway between county seats from one that it has finally adopted. *Newton v. State Highway Comm.*, 194 N. C. 159, 138 S. E. 601 (1927), citing *Carlyle v. Highway Commission*, 193 N. C. 36, 136 S. E. 612 (1927).

But the power of the Commission to slightly or immaterially vary the location of the highway in question is not at an end until its final acceptance thereof. *Smith v. State Highway Comm.*, 194 N. C. 333, 139

S. E. 606 (1927), approving *Newton v. State Highway Comm.*, 194 N. C. 159, 138 S. E. 601 (1927).

Enjoining Unauthorized Change.—An injunction will lie against the State Highway Commission from proceedings to make a change in a link of the State system of public highway unauthorized by the statute. *Newton v. State Highway Comm.*, 194 N. C. 159, 138 S. E. 601 (1927).

Effect of Finding of Trial Court on Appeal.—A finding by the trial judge that an entire change of route in a link of highways connecting two county seats was

only temporary is not binding upon the Supreme Court on appeal when as a matter of law, upon the evidence, it is conclusively made otherwise to appear. *Newton v. State Highway Comm.*, 194 N. C. 159, 138 S. E. 661 (1927).

Failure to Protest Location.—Upon the failure of any principal town along the proposed route to object thereto, it is not a proper or necessary party to the proceedings, and the trial court may refuse its motion to be made a party. *Newton v. State Highway Comm.*, 194 N. C. 159, 138 S. E. 601 (1927).

§§ 136-48 to 136-50: Repealed by Session Laws 1943, c. 410.

Part 2. County Public Roads Incorporated into State Highway System.

§ 136-51. Maintenance of county public roads vested in State Highway Commission.—From and after July first, one thousand nine hundred and thirty-one, the exclusive control and management and responsibility for all public roads in the several counties shall be vested in the State Highway Commission as hereinafter provided, and all county, district, and township highway or road commissioners, by whatever name designated, and whether created under public, public-local, or private acts, shall be abolished:

Provided, that for the purpose of providing for the payment of any bonded or other indebtedness, and for the interest thereon, that may be outstanding as an obligation of any county, district, or township commission herein abolished, the boards of county commissioners of the respective counties are hereby constituted fiscal agents, and are vested with authority and it shall be their duty to levy such taxes on the taxable property or persons within the respective county, district, or township by or for which said bonds or other indebtedness were issued or incurred and as are now authorized by law to the extent that the same may be necessary to provide for the payment of such obligations; and the respective commissions herein abolished shall on or before July first, one thousand nine hundred and thirty-one, turn over to said boards of county commissioners any moneys on hand or evidences of indebtedness properly applicable to the discharge of any such indebtedness (except such moneys as are mentioned in paragraph (a) above); and all uncollected special road taxes shall be payable to said boards of county commissioners, and the portion of said taxes applicable to indebtedness shall be applied by said commissioners to said indebtedness, or invested in a sinking fund according to law. All that portion of said taxes or other funds coming into the hands of said county commissioners and properly applicable to the maintenance or improvement of the public roads of the county shall be held by them as a special road fund and disbursed upon proper orders of the Commission.

Provided, further, that in order to fully carry out the provisions of this section the respective boards of county commissioners are vested with full authority to prosecute all suitable legal actions. (1931, c. 145, s. 7; 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—In bringing forward Public Acts 1931, c. 145, s. 7, to appear as this section of the General Statutes, the paragraph formerly designated as subsection (a) was omitted, but the reference to it in the present second paragraph of the section was retained.

The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

Jurisdiction Over Cartway Proceedings.—The Act of 1931 incorporated in this section discloses no legislative intent to withdraw from the board of commission-

ers of Buncombe County jurisdiction over cartway proceedings instituted under the provisions of ch. 328, § 18, Pub. Local Laws of 1923. *Merrell v. Jenkins*, 242 N. C. 636, 89 S. E. (2d) 242 (1955).

Quoted in *Reynolds v. J. C. Critcher, Inc.*, 256 N. C. 309, 123 S. E. (2d) 738 (1962).

Cited in *In re Edwards*, 206 N. C. 549, 174 S. E. 505 (1934); *Grady v. Grady*, 209 N. C. 749, 184 S. E. 512 (1936); *Cahoon v. Roughton*, 215 N. C. 116, 1 S. E. (2d) 362 (1939); *Moore v. Clark*, 235 N. C. 364, 70 S. E. (2d) 182 (1952).

§ 136-52. Eminent domain with respect to county roads.—To the end that the State Highway Commission may the better take over the maintenance and improvement, reconstruction and construction of the public roads in the various counties, together with the bridges and railroad grade crossings thereon, and may the better carry out the intent and purposes of § 136-51, the Commission is vested, in respect of and to the public roads in the various counties, with the same powers of and responsibility of eminent domain as are conferred and imposed upon the Commission in §§ 136-18 and 136-19 in respect of and to the State highway system, and the Commission is authorized and empowered to adopt rules and regulations governing the use of the various county road systems and to promulgate the same. (1931, c. 145, s. 10; 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

§ 136-53. Map of county road systems posted; objections.—On or before May first, one thousand and nine hundred and thirty-one, the designation of all roads comprising the several county road systems as are proposed to be taken over for maintenance and improvement by the State Highway Commission shall be mapped, and there shall be publicly posted at the courthouse door in each county a map of all the roads in such county to be contained in the county road system of such county, and the board of county commissioners of such county and the street-governing body of each city or town in such county shall be notified of the roads that are to be selected and to be made a part of the county road system of such county. If no objection is made by the board of county commissioners or the street-governing body of any city or town in such county within thirty (30) days after the notification herein provided for, then and in that event the roads to which no objections are made shall be and constitute the county road system for such county. If objections are made by the board of county commissioners of the county or the street-governing body of any city or town in the county, the Commission shall as soon as practicable send an agent to such county who shall take the matter up with the view of adjusting the objections and agreeing with the county commissioners or the street-governing body of any city or town. If such agent and the board of county commissioners or the street-governing body of any city or town cannot agree, then the whole matter shall be heard and determined by the Commission in session under such rules and regulations as may be made by the Commission. Notice of the time and place of the hearing shall be given by the Commission at the courthouse door and in some newspaper, if any, published in the county, at least ten days prior to the hearing, and the decision of the Commission shall be final. It is the intent and purpose of this section that all roads legally established and used as public roads in the various counties on March 20, 1931, are to and shall be included in the county road systems of the various counties. Maps showing the proposed roads to constitute the county road systems in the several counties have been printed and bound and are now on file in the office of the Commission, and are the maps which shall be posted. If it shall appear to the Commission prior to the posting of the maps under this section that any road or roads which should be included in the county road systems of any county have been omitted from the map of any county as printed, the Commission may change such maps so as to include such road or roads before posting. (1931, c. 145, s. 11; 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

Cited in *Speight v. Anderson*, 226 N. C. 492, 39 S. E. (2d) 371 (1946).

Part 3. Power to Make Changes in Highway System.

§ 136-54. Power to make changes.—Subject to the provisions of §§ 136-56, 136-57 and 136-60 the State Highway Commission shall be authorized, when in its judgment the public good requires it, to change, alter, add to, or abandon and

substitute new sections for, any portion of the State highway system, as now or hereafter, taken over, maintained and established: Provided, no road shall be changed, altered, or abandoned so as to disconnect county seats and principal towns. (1927, c. 46, s. 1; 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—The relation between §§ 136-54, 136-55, 136-56, 136-57 and 136-60 should be noted. Section 136-55 prescribes a procedure for the change or abandonment of portions of the State highway system, under which the decision of the Commission is final. However, §§ 136-54 and 136-55 are subject to the provisions of § 136-56 (requiring the consent of the street governing body of a town before the number of State highways entering certain towns may be reduced); § 136-57 (requiring the consent of the road governing body of the county if the road in question has been located and constructed in accordance with plans and specifications prepared by and on file with the Commission); and § 136-60 (requiring the consent of the county commissioners if the road in question was a portion of the county road system taken over by the State by virtue of §§ 136-51

through 136-53). Thus, §§ 136-54 and 136-55 must be read with these limitations in mind.

The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

Validity of Statute.—Chapter 46 of Public Laws 1927 was held valid. *Parker v. State Highway Comm.*, 195 N. C. 783, 143 S. E. 871 (1928).

Elimination of Underpass.—Where the State Highway Commission, in the interest of public safety, builds an overpass and re-locates a highway to cut out dangerous curves and an inadequate underpass, it has the authority to order the underpass closed, if not by authority expressly conferred then in the exercise of the police power by an appropriate agency of the State. *Mosteller v. Southern Ry. Co.*, 220 N. C. 275, 17 S. E. (2d) 133 (1941).

§ 136-55. Notice to local road authorities.—Before any road, which is being maintained by the State Highway Commission as a part of the State highway system, can be changed, altered, or abandoned, the chairman or his duly authorized agent shall notify the road-governing authorities of the county or counties in which said change, alteration, or abandonment is proposed, of the extent, nature and character of the proposed change, alteration or abandonment, and a map showing the old location and the new proposed location shall be posted at the courthouse door. If within thirty days after the giving of such notice and the posting of such map the road-governing body of such county or the street-governing body of any county seat or principal town immediately affected thereby, shall protest the proposed change, alteration or abandonment by filing a written notice of such protest with the Commission at Raleigh, the Commission shall thereupon designate three members of the Commission, one of whom may be the chairman, to hear such protest. The place, which shall be within the county, and the time of such hearings shall be fixed by the chairman and notice given to the protesting parties. Such hearings shall be held publicly and all persons desiring to be heard shall be heard. At the close of such hearing the committee shall publicly state their decision. The protesting parties may appeal from such decision to the whole Commission and such appeal shall be heard at a regular or duly called meeting for this purpose in the city of Raleigh and notice given to the appellants. The decision of the whole Commission shall be determined by roll call vote duly recorded upon the minutes of the Commission.

Any county seat or principal town shall be deemed "immediately affected" if the proposed change or alteration shall enter or leave said town by streets other than those used for such purposes prior to the proposed change. (1927, c. 46, s. 2; 1931, c. 145; 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—The 1931 amendment inserted the words "as a part of the State highway system" near the beginning of the first sentence. It struck out the words "commissioner of the district in which said road is located" formerly appearing in the same sentence and inserted in lieu thereof "chairman or his duly authorized agent." It also struck out the words "the others

to be from districts other than that from which the protest is filed," formerly appearing before the phrase "to hear such protest" at the end of the second sentence.

The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

Consent of Unimportant Town.—Where, in the exercise of its discretion, the Com-

mission has made a slight change of an existing route, the consent of an unimportant town is unnecessary. *Yadkin College v.*

State Highway Comm., 194 N. C. 180, 138 S. E. 717 (1927).

§ 136-55.1. Notice to property owners.—At the time of the notification of the road-governing authorities of the county, or counties, in which there is a proposed change, alteration or abandonment of any road, and the posting of a map showing the old location and the new proposed location, as provided in G. S. 136-55, the State Highway Commission shall notify all known property owners whose property will be affected thereby, of said change, alteration or abandonment. The said notice shall be in general terms and shall call attention to the map which is posted at the courthouse door. This notice shall be sent to the property owner by certified mail, return receipt requested, or shall be personally delivered.

The State Highway Commission shall also publish in a newspaper published in the county in which said change, alteration or abandonment is proposed, a notice setting forth in general terms the proposed change, alteration or abandonment and calling attention to the map posted at the courthouse door. This notice shall be published once a week for four consecutive weeks. If there is no newspaper published in said county, then the said notice shall be posted at the courthouse door and at four other public places in said county for a period of thirty days.

Compliance with the provisions of this section shall constitute notice to all property owners affected by the proposed change, alteration or abandonment. (1957, c. 1063.)

Editor's Note.—By virtue of § 136-1.1, "State Highway Commission" was substi-

tuted for "State Highway and Public Works Commission."

§ 136-56. Number of highways entering town not reduced without consent.—The number of State highways entering the corporate limits of a county seat, principal town, or town in which is located any of the principal State institutions, now served by the State highway system, shall not be reduced without the consent of the street-governing body of said town. (1927, c. 46, s. 3.)

A town with approximately 100 people and no substantial industries is not a principal town as contemplated in this section.

Yadkin College v. State Highway Comm., 194 N. C. 180, 138 S. E. 717 (1927).

§ 136-57. Consent of local road authorities.—No portion of the State highway system which has heretofore, or which shall hereafter be located and constructed in accordance with plans and specifications prepared by and on file with the State Highway Commission, shall be changed or abandoned without the consent of the road-governing body of the county in which said road is situated. (1927, c. 46, s. 4; 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment substituted "State Highway Commission" for

"State Highway and Public Works Commission."

§ 136-58. Confirmation.—All changes in, alterations of, and/or abandonments of any portion of the State highway system heretofore made by the State Highway Commission which are not now the subject of litigation, are hereby ratified, approved and confirmed and the newly-established routes are hereby made a part of the State highway system as fully and to the same extent as if they had appeared upon the map and surveys made and posted by the Commission as required in § 136-47 and no action shall hereafter be maintained in any court of this State against the Commission on account of such change, alteration and/or abandonment. (1927, c. 46, s. 6; 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment substituted "State Highway Commission" for

"State Highway and Public Works Commission."

§ 136-59. No court action but by local road authorities.—No action shall be maintained in any of the courts of this State against the State Highway Commission

to determine the location of any State highways or portion thereof, by any person, corporation, or municipal corporation, other than the road-governing body of the county in which said road is situated, or the county seat or principal town affected, as defined in § 136-55 by any change, alteration or abandonment. (1927, c. 46, s. 7; 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

Discretion Not Reviewable.—It is within the discretion of the road-governing body of a county to object or not to the partial change in a road by the Commission and their action is not subject to review in the courts. And mandamus will not lie to control such discretion. *Parker v. State*

Highway Comm., 195 N. C. 783, 143 S. E. 871 (1928).

Decision of Commission Final.—The decision of the State Highway Commission upon appeal by the board of commissioners from an adverse decision is final and conclusive. *Parker v. State Highway Comm.*, 195 N. C. 783, 143 S. E. 871 (1928).

Cited in *Reed v. State Highway, etc., Comm.*, 209 N. C. 648, 184 S. E. 513 (1936).

§ 136-60. Road taken over not to be abandoned without consent of county commissioners.—No road, which shall be a part of any county road system as the same shall be finally adopted in pursuance of § 136-53, shall be abandoned or materially changed without the consent of the board of county commissioners of the county in which said road is located, except the State Highway Commission may be relieved of all responsibility for county roads in areas where the federal government acquires exclusive ownership and control. (1931, c. 145, s. 12; 1943, c. 410; 1957, c. 65, s. 11.)

Editor's Note.—The 1943 amendment added the exception clause at the end of the section.

The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

§ 136-61. Plans for secondary roads; duties of State Highway Commission.—The State Highway Commission shall establish statewide standards and criteria for additions to the secondary system and for maintenance and construction of secondary roads. On the basis of these standards and criteria, the Commission shall allocate funds appropriated for secondary road additions, maintenance, and construction to each of the counties, in order that each county shall receive an equitable share of available funds. The State Highway Commission shall establish policies for the preparation of annual plans for maintenance and construction of the secondary roads in each county, which policies shall include provision for consultation in the preparation process with county commissioners and interested citizens, recommendations by county commissioners and interested citizens concerning the plan, reports to persons making recommendations on the disposition of the recommendations, final adoption of the plan, and filing of a copy of the plan with the board of county commissioners. (1931, c. 145, s. 13; 1933, c. 172, s. 17; 1957, c. 65, s. 6; 1961, c. 232, s. 5.)

Editor's Note.—The 1957 amendment rewrote this section, which formerly related to petition by county commissioners to change or abandon roads or build new roads.

The 1961 amendment rewrote this section.

Petition method of taking roads as part of county system under provisions of section prior to amendment, see *Reed v. State Highway, etc., Comm.*, 209 N. C. 648, 184 S. E. 513 (1936).

§ 136-62. Right of petition.—The citizens of the State shall have the right to present petitions to the board of county commissioners, and through the board to the Director of Highways, concerning additions to the system and improvement of roads. The board of county commissioners shall receive such petitions, forwarding them on to the State Highway Commission with their recommendations. Petitions on hand at the time of the periodic preparation of the secondary road plan shall be considered by the representatives of the Highway Department in preparation of that plan, with report on action taken by these representatives on such petitions to the board of commissioners at the time of consultation. The citizens of the State

shall at all times have opportunities to discuss any aspect of secondary road additions, maintenance, and construction, with representatives of the Highway Department in charge of the preparation of the secondary road plan, and if not then satisfied opportunity to discuss any such aspect with the division engineer, the Director of Highways, and the State Highway Commission in turn. (1931, c. 145, s. 14; 1933, c. 172, s. 17; 1957, c. 65, s. 7.)

Editor's Note.—The 1957 amendment rewrote this section.

§ 136-63. Change or abandonment of roads.—The board of county commissioners of any county may, on their own motion or on petition of a group of citizens, request the Director of Highways to change or abandon any road in the secondary system, when in the opinion of the board the best interest of the people of the county will be served thereby. The Director shall thereupon make inquiry into the proposed change or abandonment, and if in his opinion the public interest demands it, shall make such change or abandonment. If the change or abandonment shall affect a road connecting with any street of a city or town, the change or abandonment shall not be made until the street-governing body of the city or town shall have been duly notified and given opportunity to be heard on the question. If not satisfied with the decision of the Director, the board of county commissioners or the street-governing body of the city or town shall have opportunity to discuss the matter with the State Highway Commission. Any request refused by the Director of Highways may be presented again upon the expiration of twelve (12) months. (1931, c. 145, s. 15; 1957, c. 65, s. 8.)

Editor's Note.—The 1957 amendment rewrote this section.

§ 136-64. Filing of complaints with Commission; hearing and appeal.—In the event of failure to maintain the roads of the State highway system or any county road system in good condition, the board of county commissioners of such county may file complaint with the State Highway Commission. When any such complaint is filed, the Commission shall at once investigate the same, and if the same be well founded, the said Commission shall at once order the repair and maintenance of the roads complained of and investigate the negligence of the persons in charge of the roads so complained of, and if upon investigation the person in charge of the road complained of be at fault, he may be discharged from the service of the Commission. The board of commissioners of any county, who shall feel aggrieved at the action of the Commission upon complaint filed, may appeal from the decision of the Commission to the Governor, and it shall be the duty of the Governor to adjust the differences between the board of county commissioners and the Commission. (1921, c. 2, s. 20; C. S., s. 3846(11); 1931, c. 145, s. 17; 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

§§ 136-65, 136-66: Repealed by Session Laws 1943, c. 410.

ARTICLE 3A.

Streets and Highways in and Around Municipalities.

§ 136-66.1. Responsibility for streets inside municipalities.—Responsibility for streets and highways inside the corporate limits of municipalities is hereby defined as follows:

- (1) **The State Highway System.**—The State highway system inside the corporate limits of municipalities shall consist of a system of major streets and highways necessary to move volumes of traffic efficiently and effectively from points beyond the corporate limits of the municipalities

through the municipalities and to major business, industrial, governmental and institutional destinations located inside the municipalities. The State Highway Commission shall be responsible for the maintenance, repair, improvement, widening, construction and reconstruction of this system. These streets and highways within corporate limits are of primary benefit to the State in developing a State-wide coordinated system of primary and secondary streets and highways, but many of these streets and highways also have varying degrees of benefit to the municipalities. Therefore, the respective responsibilities of the State Highway Commission and the municipalities for the acquisition and cost of rights of way for State highway system street improvement projects shall be determined by mutual agreement between the Commission and each municipality.

- (2) The Municipal Street System.—In each municipality the municipal street system shall consist of those streets and highways accepted by the municipality which are not a part of the State highway system. The municipality shall be responsible for the maintenance, construction, reconstruction, and right of way acquisition for this system. (1959, c. 687, s. 1.)

§ 136-66.2. Development of a coordinated street system.—(a) Each municipality, with the cooperation of the State Highway Commission, shall develop a comprehensive plan for a street system that will serve present and anticipated volumes of vehicular traffic in and around the municipality. The plan shall be based on the best information available including, but not limited to, population growth, economic conditions and prospects, and patterns of land development in and around the municipality, and shall provide for the safe and effective use of streets and highways through such means as parking regulations, signal systems, and traffic signs, markings, and other devices. The State Highway Commission may provide financial and technical assistance in the preparation of such plans.

(b) After completion and analysis of the plan, the plan may be adopted by both the governing body of the municipality and the State Highway Commission as the basis for future street and highway improvements in and around the municipality. As a part of the plan, the governing body of the municipality and the State Highway Commission shall reach an agreement as to which of the existing and proposed streets and highways included in the plan will be a part of the State highway system and which streets will be a part of the municipal street system. As used in this article, the State highway system shall mean both the primary highway system of the State and the secondary road system of the State within municipalities.

(c) From and after the date that the plan is adopted, the streets and highways designated in the plan as the responsibility of the State Highway Commission shall become a part of the State highway system and all such system streets shall be subject to the provisions of G. S. 136-93, and all streets designated in the plan as the responsibility of the municipality shall become a part of the municipal street system.

(d) Either the municipality or the Commission may propose changes in the plan at any time by giving notice to the other party, but no change shall be effective until it is adopted by both the Commission and the municipal governing board.

(e) Until the adoption of a comprehensive plan for future development of the street system in and around municipalities, the State Highway Commission and any municipality may reach an agreement as to which existing or proposed streets and highways within the municipal boundaries shall be added to or removed from the State highway system.

(f) Streets within municipalities which are on the State highway system as of July 1, 1959, shall continue to be on that system until changes are made as provided in this section. (1959, c. 687, s. 2.)

§ 136-66.3. Acquisition of rights of way.—(a) When any one or more street construction or improvement projects are proposed on the State highway system in and around a municipality, the State Highway Commission and the municipal governing body shall reach agreement on their respective responsibilities for the acquisition and cost of rights of way necessary for such project or projects. In reaching such agreement, the State Highway Commission and the municipality shall take into consideration:

- (1) The relative importance of the project to a coordinated State-wide system of highways.
- (2) The relative benefit of the project to the municipality.
- (3) The degree to which the cost of acquisition of rights of way can be reduced or minimized through action by the municipality and/or the State Highway Commission to acquire all or part of the rights of way for proposed projects well in advance of construction of such projects.

(b) Whenever a municipality agrees to acquire rights of way for a State highway system street improvement project, the State Highway Commission may agree to reimburse the municipality in whole or in part for expenditures made by the municipality to acquire such rights of way.

(c) In the acquisition of rights of way for any State highway system street or highway within municipal boundaries, municipalities shall be vested with the same authority to acquire such rights of way as is granted to the State Highway Commission in chapter 136 of the General Statutes of North Carolina.

(d) In the absence of an agreement, the State Highway Commission shall retain authority to pay the full cost of acquiring rights of way where the proposed project is deemed important to a coordinated State highway system.

(e) Either the municipality or the State Highway Commission may at any time propose changes in the agreement setting forth their respective responsibilities for right of way acquisition by giving notice to the other party, but no change shall be effective until it is adopted by both the municipal governing body and the Commission.

(f) Any municipality which agrees to contribute any part of the cost of acquiring rights of way for any State highway system street or highway shall be a proper party in any proceeding in court relating to the acquisition of such rights of way. (1959, c. 687, s. 3.)

§ 136-66.4. Rules and regulations; authority of municipalities.—The State Highway Commission shall have authority to adopt such rules and regulations as are necessary to carry out the responsibilities of the Commission under this article, and municipalities shall have and may exercise such authority as is necessary to carry out their responsibilities under this article. (1959, c. 687, s. 4.)

ARTICLE 4.

Neighborhood Roads, Cartways, Church Roads, etc.

§ 136-67. Neighborhood public roads.—All those portions of the public road system of the State which have not been taken over and placed under maintenance or which have been abandoned by the State Highway Commission, but which remain open and in general use as a necessary means of ingress to and egress from the dwelling house of one or more families, and all those roads that have been laid out, constructed, or reconstructed with unemployment relief funds under the supervision of the Department of Public Welfare, and all other roads or streets or portions of roads or streets whatsoever outside of the boundaries of any incorporated city or town in the State which serve a public use and as a means of ingress or egress for one or more families, regardless of whether the same have ever been a portion of any State or county road system, are hereby declared to be neighborhood public roads and they shall be subject to all of the provisions of §§ 136-68,

136-69 and 136-70 with respect to the alteration, extension, or discontinuance thereof, and any interested party is authorized to institute such proceeding, and in lieu of personal service with respect to this class of roads, notice by publication once a week in any newspaper published in said county, or in the event there is no such newspaper, by posting at the courthouse door and three other public places, shall be deemed sufficient: Provided, that this definition of neighborhood public roads shall not be construed to embrace any street, road or driveway that serves an essentially private use, and all those portions and segments of old roads, formerly a part of the public road system, which have not been taken over and placed under maintenance and which have been abandoned by the State Highway Commission and which do not serve as a necessary means of ingress to and egress from an occupied dwelling house are hereby specifically excluded from the definition of neighborhood public roads, and the owner of the land, burdened with such portions and segments of such old roads, is hereby invested with the easement or right of way for such old roads heretofore existing.

Upon request of the board of county commissioners of any county, the State Highway Commission is permitted, but is not required, to place such neighborhood public roads as above defined in a passable condition without incorporating the same into the State or county system, and without becoming obligated in any manner for the permanent maintenance thereof.

This section shall not authorize the reopening on abandoned roads of any railroad grade crossing that has been closed by order of the State Highway Commission in connection with the building of an overhead bridge or underpass to take the place of such grade crossing. (1929, c. 257, s. 1; 1933, c. 302; 1941, c. 183; 1949, c. 1215; 1957, c. 65, s. 11.)

Editor's Note.—The 1949 amendment rewrote this section as changed by the 1941 amendment.

The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

Purpose of Section.—The purpose of this section, defining neighborhood public roads, was to bring the designated roads within the procedure prescribed in the original act, Public Laws 1931, c. 448 (now a part of § 136-53). *Speight v. Anderson*, 226 N. C. 492, 39 S. E. (2d) 371 (1946).

Section Applies Only to Established Easements and Roads.—This section refers to traveled ways which were at the time of the adoption of the 1941 amendment established easements or roads or streets in a legal sense, and it cannot be construed to include ways of ingress and egress existing by consent of the landowner as a courtesy to a neighbor, nor to those adversely used for a time insufficient to create an easement. *Speight v. Anderson*, 226 N. C. 492, 39 S. E. (2d) 371 (1946).

Easements in Abandoned Roads Retained for Use by Public.—By this section, the easements theretofore owned by the State in and to such segments of abandoned road are retained and reserved by the State for use by the public, not as public highways but as neighborhood public roads. Every segment of public road which has been abandoned as a part of the State road system coming within the terms of the statute is thus, by legislative enactment, established as a neighborhood public road. *Woody v. Barnett*, 235 N. C. 73, 68 S. E. (2d) 810 (1952).

Road Maintained for Convenience of Landowner's Tenants.—Where all the evidence tended to show that road was laid out and maintained primarily as a convenience for those who resided on defendants' tracts, no continuous use for a public purpose was disclosed within the meaning of this section. *Speight v. Anderson*, 226 N. C. 492, 39 S. E. (2d) 371 (1946).

Persons living along a highway which had been taken over by the State Highway Commission, and subsequently abandoned by it, are "interested citizens" within the meaning of this section, and may maintain a proceeding to have the road established as a "neighborhood public road." *Grady v. Grady*, 209 N. C. 749, 184 S. E. 512 (1936).

This section merely fixes the status of roads abandoned by the State Highway Commission as public roads and does not invest any private easement in owners of property abutting the abandoned road, their right to the continued use of such road being the same as that of the public generally. *Mosteller v. Southern Ry. Co.*, 220 N. C. 275, 17 S. E. (2d) 133 (1941).

Procedure for Establishment or Discontinuance.—The procedure for the establishment of a neighborhood public road, as well as the procedure to establish discontinuance thereof, is by special proceeding before the clerk, and although an interlocutory injunction in connection with the proceeding under the statute may be issued only by the judge, the superior court does not have original jurisdiction of the proceeding. *Edwards v. Hunter*, 246 N. C. 46, 97 S. E. (2d) 463 (1957).

Use of Word "Declare" in Petition.—

Where the petitioners seek to obtain a judicial declaration of the existence of those facts which are necessary to bring the road in question within the definition contained in this section, so as to procure the establishment thereof as a neighborhood public road as a matter of public record, they do not invoke the provisions of the Declaratory Judgment Act, by the use of the word "declare," and the clerk of the superior court has jurisdiction over the proceeding. *Woody v. Barnett*, 235 N. C. 73, 68 S. E. (2d) 810 (1952).

What Constitutes Abandonment.—Where the State Highway Commission, in the interest of public safety, builds an overpass and relocates a short section of the road in order to cut out dangerous curves and an inadequate underpass, and thereafter tears up the section of old road lying on one side of the underpass, the short section of old road is not a highway abandoned by the Commission which remains open and in general use by the public within the purview of this section and does not become a public road. *Mosteller v. Southern Ry. Co.*, 220 N. C. 275, 17 S. E. (2d) 133 (1941).

Allegations Insufficient to Bring Road in Question within Definition of This Section.—See *Clinard v. Lambeth*, 234 N. C. 410, 67 S. E. (2d) 452 (1951); *Edwards v. Hunter*, 246 N. C. 46, 97 S. E. (2d) 463 (1957).

Use of Abandoned Way.—Where plaintiff's allegations and evidence tended to show that the alleged public way to an old wharf had been abandoned by the Highway Commission when it took over the county roads, and that plaintiffs did not reside along the alleged public road, and that it was not necessary to them as a way of egress and ingress to their homes, but they used same in getting to the old wharf to their boats for hunting and fishing parties, they failed to establish their right to the use of the passway as a neighborhood public road. *Cahoon v. Roughton*, 215 N. C. 116, 1 S. E. (2d) 362 (1939).

Question of Discontinuance Raised by Special Proceeding.—The question of the discontinuance of a road which is a neighborhood public road, within the meaning of this section, must be determined by a special proceeding instituted before the clerk, and where the question has been presented by petition to the board of county commissioners the judgment of the superior court on appeal dismissing the petition is correct, but that part of the judgment providing that the road shall remain open is erroneous and will be stricken out on further appeal to the Supreme Court. In *re Edwards*, 206 N. C. 549, 174 S. E. 505 (1934).

Adjudication of Road as a Neighborhood

Public Road Not Authorized.—Where it was controverted whether the road in question was used permissively as a way to a private cemetery or whether it was used by the public under claim of right to a community cemetery, petitioners were not entitled to have it adjudicated a neighborhood public road solely upon a finding by the jury that it was constructed or reconstructed with employment relief funds under the supervision of the Department of Public Welfare. *Raynor v. Ottoway*, 231 N. C. 99, 56 S. E. (2d) 28 (1949).

Testimony that relief funds were used under authorization of the Department of Public Welfare on a cemetery project and that the supervisor in charge of the work, upon suggestion of an interested worker, had the workers improve the road to the cemetery, was held insufficient to establish that the reconstruction of the road was authorized or directed by the Department of Public Welfare within the meaning of this section. *Raynor v. Ottoway*, 231 N. C. 99, 56 S. E. (2d) 28 (1949).

Findings Supporting Dismissal of Action.—Where an action to have a portion of abandoned highway adjudged to be a neighborhood public road under this section was submitted to the court under agreement of the parties, findings of fact by the court, supported by evidence, to the effect that the abandoned road was not necessary for ingress or egress to any dwelling, there having been by-roads constructed giving access to the dwelling in question and connecting the schools involved and that the abandoned road had not remained open and in general use by the public, were held to support judgment dismissing the action. *Woody v. Barnett*, 239 N. C. 420, 79 S. E. (2d) 789 (1954).

Evidence Sufficient for Jury.—Evidence that prior to 1929 a road existed across certain lands from a river to another highway, that such way was used by the public at large, at its convenience, in going to fishing camps located on the river, but that the road was not taken over for maintenance by the State Highway Commission, is sufficient to be submitted to the jury as to whether such road remained a neighborhood public road. *Smith v. Moore*, 254 N. C. 186, 118 S. E. (2d) 436 (1961).

Evidence was insufficient to support a finding that a road was a public road, but was sufficient to support a finding that it was a neighborhood public road within the meaning of this section. *Wetherington v. Smith*, 259 N. C. 493, 131 S. E. (2d) 33 (1963).

Stated in *Woody v. Barnett*, 243 N. C. 782, 92 S. E. (2d) 178 (1956).

Cited in *Pritchard v. Scott*, 254 N. C. 277, 118 S. E. (2d) 890 (1961).

§ 136-68. Special proceeding for establishment, alteration or discontinuance of cartways, etc.; petition; appeal.—The establishment, alteration, or discontinuance of any cartway, church road, mill road, or like easement, for the benefit

of any person, firm, association, or corporation, over the lands of another, shall be determined by a special proceeding instituted before the clerk of the superior court in the county where the property affected is situated. Such special proceeding shall be commenced by a petition filed with said clerk and the service of a copy thereof on the person or persons whose property will be affected thereby. From any final order or judgment in said special proceeding, any interested party may appeal to the superior court for trial de novo and the procedure established under chapter 40, entitled "Eminent Domain," shall be followed in the conduct of such special proceeding insofar as the same is applicable and in harmony with the provisions of this section. (1879, c. 82, s. 9; Code, s. 2023; Rev., s. 2683; C. S., s. 3835; 1931, c. 448.)

Local Modification.—Burke, Caldwell, Catawba, Lincoln: 1931 Pub. Loc. c. 313; Graham: 1935 Pub. Loc. c. 224.

Cross Reference.—See note to § 136-69.

Editor's Note.—Prior to the 1931 amendment the board of supervisors had authority to lay out and discontinue cartways.

This Section and § 136-69 to Be Strictly Construed.—This and the following section, relating to the establishment of cartways for ingress and egress to a highway over intervening lands, are in derogation of common law and must be strictly construed. Brown v. Glass, 229 N. C. 657, 50 S. E. (2d) 912 (1948); Pritchard v. Scott, 254 N. C. 277, 118 S. E. (2d) 890 (1961).

This section and § 136-69 are in derogation of the free and unrestricted use and enjoyment of realty by the owner of the land over which it is sought to establish a cartway, and must be strictly construed. Candler v. Sluder, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

The rule of strict construction does not limit the uses to those specified in the statute if in fact there are uses which do meet statutory requirements. Candler v. Sluder, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

But There Must Be Use Complying with Statute.—The use to which petitioner for a cartway is putting or preparing to put his land must comply with statutory specifications. Candler v. Sluder, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

Material Differences between "Way of Necessity" and "Cartway."—Material differences between a way of necessity under the general law and a cartway condemned in accordance with this section and § 136-69 include the following: If entitled to a "way of necessity" under the general law, a person is entitled thereto as a matter of right. No payment of compensation therefor is required. On the other hand, the "peculiar way of necessity" is obtained by condemnation and payment of compensation for a specific cartway in those instances where petitioner has no reasonable access to a public road as a matter of legal right or by permission. Pritchard v. Scott, 254 N. C. 277, 118 S. E. (2d) 890 (1961).

Jurisdiction of Clerk.—The legislature has vested in the clerks of the superior courts of the State jurisdiction over proceedings relating to the establishment,

maintenance, alteration, discontinuance, or abandonment of neighborhood public roads, church roads, and cartways. Proceedings under this article ordinarily involve questions of fact rather than issues of fact. An expeditious method of entertaining and disposing of such proceedings, without unnecessarily cluttering the civil issue docket of the superior court, was desired. To this end jurisdiction was vested in the clerk. Woody v. Barnett, 235 N. C. 73, 68 S. E. (2d) 810 (1952).

Order of Clerk May Be Appealed.—An order of a clerk of superior court adjudging the right to a cartway is a final judgment and an appeal lies therefrom. Candler v. Sluder, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

When Appeal May Be Taken.—A defendant is not required to wait until a road-way is laid off before availing himself of the right to appeal, though he may, if he so elects, except to the order and defer his appeal until after the cartway has been located. Candler v. Sluder, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

Upon appeal from the clerk, the trial in superior court is de novo. Candler v. Sluder, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

The issue to be tried in superior court is the same as before the clerk—whether petitioners are entitled to a cartway over some lands; it involves only the elements set out in § 136-69. It does not involve the actual location of the road, or, as between defendants, whose lands shall be burdened thereby. These matters are for the jury of view, and it is error for the court to undertake to dispose of them. Candler v. Sluder, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

Municipality Has Exclusive Control of Streets and Ways.—The law relating to cartways was not intended to withdraw from cities and towns any part of their exclusive control over their streets and other public ways and confers no jurisdiction on the clerk of the superior court to establish an alley within an incorporated town. Parsons v. Wright, 223 N. C. 520, 27 S. E. (2d) 534 (1943).

An action to obtain a judicial declaration of plaintiff's right to an easement appurtenant and by necessity over the lands of defendants is authorized by chap. 1, art. 26, and the superior court has jurisdiction, it not being a special proceeding to establish

a cartway, which must be instituted before the clerk. *Carver v. Leatherwood*, 230 N. C. 96, 52 S. E. (2d) 1 (1949).

A proceeding in Haywood County to establish cartways over the lands of others should be instituted before the board of county commissioners, and not before the clerk, and the clerk of the superior court of that county has no jurisdiction of a proceeding for this relief instituted before him. *Rogers v. Davis*, 212 N. C. 35, 192 S. E. 872 (1937).

Applied in *Garris v. Byrd*, 229 N. C. 343, 49 S. E. (2d) 625 (1948); *Wetherington v. Smith*, 259 N. C. 493, 131 S. E. (2d) 33 (1963).

Cited in *Waldroup v. Ferguson*, 213 N. C. 198, 195 S. E. 615 (1938); *Edwards v. Hunter*, 246 N. C. 46, 97 S. E. (2d) 463 (1957); *Andrews v. Lovejoy*, 247 N. C. 554, 101 S. E. (2d) 395 (1958); *Potter v. Potter*, 251 N. C. 760, 112 S. E. (2d) 569 (1960).

§ 136-69. Cartways, tramways, etc., laid out; procedure.—If any person, firm, association, or corporation shall be engaged in the cultivation of any land or the cutting and removing of any standing timber, or the working of any quarries, mines, or minerals, or the operating of any industrial or manufacturing plants, or public or private cemetery, or taking action preparatory to the operation of any such enterprises, to which there is leading no public road or other adequate means of transportation affording necessary and proper means of ingress thereto and egress therefrom, such person, firm, association, or corporation may institute a special proceeding as set out in the preceding section, and if it shall be made to appear to the court necessary, reasonable and just that such person shall have a private way to a public road or watercourse or railroad over the lands of other persons, the court shall appoint a jury of view of three disinterested freeholders to view the premises and lay off a cartway, tramway, or railway of not less than fourteen feet in width, or cableways, chutes, and flumes, and assess the damages the owner or owners of the land crossed may sustain thereby, and make report of their findings in writing to the clerk of the superior court. Exceptions to said report may be filed by any interested party and such exceptions shall be heard and determined by the clerk of the superior court. The clerk of the superior court may affirm or modify said report, or set the same aside and order a new jury of view. All damages assessed by a judgment of the clerk, together with the cost of the proceeding, shall be paid into the clerk's office before the petitioners shall acquire any rights under said proceeding.

Where a tract of land lies partly in one county and partly in an adjoining county, or where a tract of land lies wholly within one county and the public road nearest or from which the most practical roadway to said land would run, lies in an adjoining county and the practical way for a cartway to said land would lead over lands in an adjoining county, then and in that event the proceeding for the laying out and establishing of a cartway may be commenced in either the county in which the land is located or the adjoining county through which said cartway would extend to the public road, and upon the filing of such petition in either county the clerk of the court shall have jurisdiction to proceed for the appointment of a jury from the county in which the petition is filed and proceed for the laying out and establishing of a cartway as if the tract of land to be reached by the cartway and the entire length of the cartway are all located within the bounds of said county in which the petition may be filed. (1798, c. 508, s. 1, P. R.; 1822, c. 1139, s. 1, P. R.; R. C., c. 101, s. 37; 1879, c. 258; Code, s. 2056; 1887, c. 46; 1903, c. 102; Rev., s. 2686; 1909, c. 364, s. 1; 1917, c. 187, s. 1, c. 282, s. 1; C. S., s. 3836; 1921, c. 135; Ex. Sess. 1921, c. 73; 1929, c. 197, s. 1; 1931, c. 448; 1951, c. 1125, s. 1; 1961, c. 71.)

Cross Reference.—See note to § 136-68.

Editor's Note.—The first 1921 amendment made this section applicable to industrial and manufacturing plants, and inserted in the first sentence the words "affording necessary and proper means of ingress thereto and egress therefrom." The 1931 amendment made material changes in the section,

and the 1951 amendment added the second paragraph.

The 1961 amendment inserted in the first sentence of the first paragraph the words "or public or private cemetery."

In General.—A property owner who has no reasonable access to his property and for that reason is denied the beneficial use

thereof may file his petition with the clerk of the superior court and, upon a showing of necessity and payment of the damages sustained, have an easement imposed on the land of his neighbor to provide the isolated property owner reasonable access to a public road. *Kanupp v. Land*, 248 N. C. 203, 102 S. E. (2d) 779 (1958).

Section Strictly Construed.—This section is in derogation of the rights of landowners, and must be strictly construed. *Warlick v. Lowman*, 103 N. C. 122, 9 S. E. 458 (1889); *Pritchard v. Scott*, 254 N. C. 277, 118 S. E. (2d) 890 (1961).

This section and § 136-68 are in derogation of the free and unrestricted use and enjoyment of realty by the owner of the land over which it is sought to establish a cartway, and must be strictly construed. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

Section Must Be Followed.—The right to establish cartways, tramways, etc., over the lands of another, when no such right arises by implication of law, is regulated in this State by statute, and one who desires to cross the lands of another for the purpose of removing timber, or for other purposes, must follow the statute or purchase the right. *Roper Lumber Co. v. Richmond Cedar Works*, 158 N. C. 161, 73 S. E. 902 (1912).

Petitioner's Land Must Be Used for One of Purposes Enumerated.—This section enumerates the purposes for which the petitioner's land must be used in order to confer upon the owner the right of a "way of necessity" over another's land, and the listing of them excludes other uses not named, the presence of one of those named becoming a condition precedent to the exercises of the right. It will be observed that all of them respect substantial traffic or transportation of products taken from the land. *Brown v. Glass*, 229 N. C. 657, 50 S. E. (2d) 912 (1948).

Petitioners are not entitled to the establishment of a cartway over the intervening lands of another for the purpose of egress to the highway for a home they propose to construct on their adjoining land, since such use does not come within those enumerated in this section. *Brown v. Glass*, 229 N. C. 657, 50 S. E. (2d) 912 (1948).

The use to which petitioner for a cartway is putting or preparing to put his land must comply with statutory specifications. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

The rule of strict construction does not limit the uses of those specified in the statute if in fact there are uses which do meet statutory requirements. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

Hunting is not a use contemplated by this section. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

But the fact that hunting is one of the principal uses does not necessarily defeat petitioners' right to a cartway, where there are other uses which do conform. *Candler*

v. Sluder, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

And Petitioner Must Have No Other Adequate Means of Ingress and Egress.—Petitioner is entitled to the establishment of a cartway across the lands of another only if petitioner's land is not adjacent to a public road and has no other adequate and proper means of ingress and egress to the highway, and he is not entitled to the relief if he has such means available to him at the time. *Garris v. Byrd*, 229 N. C. 343, 49 S. E. (2d) 625 (1948).

"Engaged in the Cultivation of Land."—In its narrow sense "engaged in the cultivation of land" means breaking the soil as with a plow, but in its broad sense it means use of the land for raising crops, whether for apples or cattle. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

The fact that crops are gathered and used by the owners and given to neighbors and not sold commercially is not a disqualification on motion to nonsuit. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

The presence of an apple orchard of forty or more trees, which had annually produced large quantities of apples and were so producing at the time of the trial, is sufficient compliance with the statute to withstand nonsuit on the question of enterprises. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

Effect of Permissive Way.—If a permissive way is in all respects reasonable and adequate as a proper means of ingress and egress, the petition for a cartway should be denied. Conversely, if the permissive nature of the way renders it insufficient to meet the requirement of "other adequate means of transportation" within the meaning of the statute, the relief should be granted. Where the court below found that the permissive way available to petitioner was "in all respects reasonable and adequate" and then concluded that the petitioner was entitled to a cartway, the Supreme Court deemed it advisable to vacate the judgment entered and remand the cause for a rehearing. *Garris v. Byrd*, 229 N. C. 343, 49 S. E. (2d) 625 (1948).

Where an owner of land not reached by any public road for 37 years used a road across defendant's land without exercising any ownership or possession except passing back and forth, and occasionally cutting out a tree or other obstruction, the way was neither a public highway nor a private cartway. *State v. Norris*, 174 N. C. 808, 93 S. E. 950 (1917).

Petitioner is not entitled to condemn a cartway if she presently has reasonable access to a public road, even if such reasonable access is permissive. *Pritchard v. Scott*, 254 N. C. 277, 118 S. E. (2d) 890 (1961).

"Necessary, Reasonable and Just."—For the owner of lands, cultivating the same, to obtain a way of necessity over the lands of another to a public road, he must show

that such way is "necessary, reasonable and just," under the provisions of this section; and where it appears, without sufficient denial, that there is a public road leading to the cultivated lands, the petition is properly dismissed. *Rhodes v. Shelton*, 187 N. C. 716, 122 S. E. 761 (1924).

A petitioner's evidence must show that the proposed cartway is "necessary, reasonable and just." *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

The petitioner is not entitled to have a cartway simply upon the ground that no public road leads to his land, or because it will be more convenient for him to have it; it must appear, further, that it is "necessary, reasonable and just" that he shall have it. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

There is no material difference in requiring petitioners to show they have no "adequate means of transportation affording necessary and proper means of ingress and egress" and in requiring them to show that a cartway is "necessary, reasonable and just." The difference is only in the approach to the question—the former has a negative and the latter an affirmative approach. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

The word "proper" embraces "reasonable and just." *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

In law the words "proper" and "reasonable" are often used interchangeably. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

Tract Devised without Egress to Public Road.—Where a petition for a "way of necessity" over the lands of another is filed in the superior court, and the petition alleges that the petitioner was devised a tract of land without any way of egress to a public road except over the land of another devisee of the testator, and there is no allegation that such a way over the land of the other devisee had theretofore existed, and there is no stipulation in the devise for a way of ingress and egress to a given point, the petitioner's exclusive remedy is under the provisions of this and the previous section, and the proceedings in the superior court were properly nonsuited. *White v. Coghill*, 201 N. C. 421, 160 S. E. 472 (1931).

Undedicated Neighborhood Road Not a Public Road.—A neighborhood road not dedicated to the public, but used by the public under permission or license of the owner of the land, is not a public road within the meaning of this section. *Collins v. Patterson*, 119 N. C. 602, 26 S. E. 154 (1896).

Cartway Quasi-Public Road.—Cartways are regarded as quasi-public roads, and the condemnation of private property for such a use has been sustained upon that ground as a valid exercise of the power of eminent domain. *Cook v. Vickers*, 141 N. C. 101, 53 S. E. 740 (1906).

Requisites for Cartways.—The fact that

there is no public road leading to the premises upon which a petitioner for a cartway resides, and that such way will be more convenient to him, will not warrant its establishment; it must be made to appear further that the petitioner has no other way of egress and ingress, and that it is necessary, reasonable and just. *Burwell v. Sneed*, 104 N. C. 118, 10 S. E. 152 (1889).

A cartway will not be granted, under this section as a mere matter of convenience, but only when it is necessary, reasonable and just that the petitioner should have it. *Warlick v. Lowman*, 103 N. C. 122, 9 S. E. 458 (1889).

Where the applicant for a cartway over the land of another has already one or more convenient rights of way over the land of another to the public road or other public place to which he seeks access, his application shall be rejected, and if an order for a cartway has been previously obtained, the cartway will be discontinued on the petition of the owner of the land. *Plimmons v. Frisby*, 60 N. C. 200 (1864). See also, *Burgwyn v. Lockhart*, 60 N. C. 264 (1864).

Essential to the establishment of a cartway is absence of reasonable access to the public road. If reasonable access exists, plaintiffs are not entitled to have a cartway established. *Kanupp v. Land*, 248 N. C. 203, 102 S. E. (2d) 779 (1958).

If petitioner is presently entitled to a way of necessity, her petition for a cartway should be denied. *Pritchard v. Scott*, 254 N. C. 277, 118 S. E. (2d) 890 (1961).

Material Differences between "Way of Necessity" and "Cartway."—See note to § 136-68.

This section merely accords a right to the property owner who is without reasonable access to the public road. It imposes no duty on him to exercise that right. Compensation for the servitude imposed by establishing a cartway is a condition precedent to acquisition. *Kanupp v. Land*, 248 N. C. 203, 102 S. E. (2d) 779 (1958).

Property Owner Cannot Be Compelled to Acquire Cartway.—This section does not accord to the owner of land adjacent to a public highway a right to reverse the statutory process and compel owners of land away from the highway to acquire a cartway across his property. Nor can such owners be compelled to accept a cartway in substitution for an easement presently owned by them. *Kanupp v. Land*, 248 N. C. 203, 102 S. E. (2d) 779 (1958).

Special Local Law Applicable.—While, under the provisions of this section a petitioner who already has an outlet from his lands to a public road, reasonably sufficient for the purpose, is not allowed to have an additional or different cartway established merely because a shorter and better route can be shown, it may be otherwise when the petitioner has proceeded under the provisions of a special local law applicable to a certain county allowing it under certain

conditions, the provisions of the local law controlling those of the general statute on the subject. *Farmer v. Bright*, 183 N. C. 655, 112 S. E. 420 (1922).

Road Impassable.—Where one's lands are connected with the public road, but by an impassable tract, he is entitled to a cartway over the lands of another. *Mayo v. Thigpen*, 107 N. C. 63, 11 S. E. 1052 (1890).

Opinion of Witnesses.—Upon the trial of an issue whether a proposed cartway was necessary and reasonable, the opinions of witnesses are not competent, the question not being one of science, peculiar skill or professional knowledge. *Burwell v. Sneed*, 104 N. C. 118, 10 S. E. 152 (1899).

Cartway May Be Laid Out for One Person.—A cartway may be awarded over the lands of another in favor of an individual citizen, when the necessity for it exists, in a manner that is reasonable and just, by proper proceedings upon petition to the township board of supervisors. *Ford v. Manning*, 152 N. C. 151, 67 S. E. 325 (1910).

Lumber Company Cannot Condemn Tramway.—A lumber company cannot condemn land for a tramway solely for carrying its own timber, but, at most, it can obtain only a temporary easement, exnecessitate, under this section, and this only by a strict compliance with the statute. *Leigh v. Garysburg Mfg. Co.*, 132 N. C. 167, 43 S. E. 632 (1903).

This section is invalid, so far as it authorizes the construction of railways over the lands of others for the exclusive use of the owner of the timber, because authorizing the taking of private property for a use which is not public, though the removal of the timber by means of such railways would aid in the development of the natural resources of the State. *Cozard v. Kanawha Hardwood Co.*, 139 N. C. 283, 51 S. E. 932 (1905).

Failure to Establish Cartway.—The failure to establish a cartway according to law is a matter of defense to be pleaded in the trial of an indictment for breaking down a gate across it. *State v. Combs*, 120 N. C. 607, 27 S. E. 30 (1897).

Inference of Public Road Rebutted by Nonuser.—The inference from evidence tending to show that a way over and through a man's land is a public road may be rebutted by evidence of nonuser for more than twenty years. *Burgwyn v. Lockhart*, 60 N. C. 264 (1864).

Private Easement.—A mere right of way which a deed gives the grantee over the grantor's remaining lands is not a "cartway," for obstruction of which indictment will lie under § 136-90. *State v. Haynie*, 169 N. C. 277, 84 S. E. 385 (1915). See also, *State v. Lance*, 175 N. C. 773, 94 S. E. 721 (1917).

Termini Must Be Fixed.—In ordering the laying out of a cartway, it is the duty of the court, in its judgment, to fix both termini of such way. *Burden v. Harman*, 52 N. C. 354 (1860).

Omission of Justices' Names from Rec-

ord.—Where the record of an order made in a county court for laying out a cartway recited—"seven justices being present,"—without giving their names, it was held that such record was fatally defective, and the order void. *Link v. Brooks*, 61 N. C. 499 (1868).

Petition Held Sufficient.—Petitioners alleged that they had used a road over defendant's land for fifty years in going from petitioners' farm to the public highway, that such road was the only means of ingress and egress from petitioners' farm to the highway, that respondents had blocked the road, and prayed that if respondents did not open up the road for use by petitioners, that the court appoint a jury of view to lay off a roadway as an outlet for petitioners. Respondents demurred on the ground that petitioners did not allege a right of easement over respondents' land by grant, necessity or prescription. It was held that petitioners were not asserting a vested right over the road barricaded by respondents, and the demurrer should have been overruled, since the petition was sufficient to state a cause of action for the establishment of a neighborhood public road under the provisions of this section. *Pearce v. Privette*, 213 N. C. 501, 196 S. E. 843 (1938).

The laying off of a cartway and the adjudication of damages are matters for the jury of view, subject to review by the court. *Garris v. Byrd*, 229 N. C. 343, 49 S. E. (2d) 625 (1948); *Tucker v. Transou*, 242 N. C. 498, 88 S. E. (2d) 131 (1955).

Once the right to a cartway has been determined, the mechanics of locating and laying it off is for the jury of view—it is for them to determine the location, its termini, and the land to be burdened thereby. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

When Appeal May Be Taken.—The action of township supervisors in ordering the establishment of a cartway under the former statute is such a final determination of the matter as will support an appeal to the board of commissioners, and thence through the superior court to the Supreme Court, although the order may not have been executed. *Warlick v. Lowman*, 101 N. C. 548, 8 S. E. 120 (1888).

Where in a proceeding to establish a private cartway over lands of defendants, the clerk entered judgment that petitioner was not entitled to the relief demanded, and petitioner appealed to the superior court, the judgment of the clerk determined the rights of the parties and an appeal to the superior court was proper and not premature, and the order of the superior court remanding the case to the clerk upon the apprehension that an appeal would not lie until after the appointment of a jury of view and the laying out of the cartway and the assessment of damages, is erroneous. *Dailey v. Bay*, 215 N. C. 652, 3 S. E. (2d) 14 (1939).

A defendant is not required to wait until

a roadway is laid off before availing himself of the right to appeal, though he may, if he so elects, except to the order and defer his appeal until after the cartway has been located. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

How Appeal Heard.—Upon such appeal to the board of commissioners, they should have considered the whole matter *de novo* upon the merits, and so likewise the superior court, upon appeal to it. *Warlick v. Lowman*, 101 N. C. 548, 8 S. E. 120 (1888).

Upon appeal from the clerk the trial in superior court is *de novo*. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

Sufficiency of Existing Cartway Matter for Jury.—Where there is evidence tending to show that the plaintiffs' lands are situated off of a public highway, with a cartway thereto of great inconvenience, and the board of road supervisors have ordered that a proposed way, more convenient and shorter in distance be laid off, and have held that such way is necessary, reasonable and just, and an appeal has been taken by the owners of the land from this order, and the owners of the lands condemned have further appealed to the superior court, an issue arises for the determination of the jury as to whether sufficient reasons exist for the proposed way, and a judgment of the lower court that the plaintiffs are not entitled to it as a matter of law is reversible error. *Brown v. Mobley*, 192 N. C. 470, 135 S. E. 304 (1926).

The issue to be tried in superior court is the same as before the clerk—whether petitioners are entitled to a cartway over some lands; it involves only the elements set out in this section. It does not involve the actual location of the road, or, as between defendants, whose lands shall be burdened thereby. These matters are for the jury of view, and it is error for the court to undertake to dispose of them. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

Appeal Lies from Order Appointing Jury.—In a proceeding to establish a cart-

way or way of necessity from lands of petitioners to a state highway, under this and the preceding section, an order of the clerk adjudging that petitioners are entitled to the relief and appointing a jury of view to "lay off" the cartway is a final determination of the right to the easement, leaving only the mechanics of execution to the jury of view, and therefore an appeal to the superior court by respondents whose lands are affected is not premature, and judgment of the superior court dismissing the appeal and remanding the cause to the clerk, is erroneous. *Triplett v. Lail*, 227 N. C. 274, 41 S. E. (2d) 755 (1947).

An order of a clerk of superior court adjudging the right to a cartway is a final judgment and an appeal lies therefrom. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

An order of a judge of the superior court that petitioner is entitled to have a cartway laid off across the lands of some of the respondents in accordance with this section and that the proceeding be remanded to the clerk, who is directed to appoint a jury of view, is a final judgment from which an appeal lies to the Supreme Court. *Pritchard v. Scott*, 254 N. C. 77, 118 S. E. (2d) 890 (1961).

The acts and findings of the jury of view are reviewable. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

Even if Order Not Appealed.—Any defendant, even if he does not except to or appeal from the order for a cartway and appointment of a jury of view, may except to and have reviewed the report of the jury of view. *Candler v. Sluder*, 259 N. C. 62, 130 S. E. (2d) 1 (1963).

Applied in *Wetherington v. Smith*, 259 N. C. 493, 131 S. E. (2d) 33 (1963).

Cited in *Pool v. Trexler*, 76 N. C. 297 (1877); *Waldroup v. Ferguson*, 213 N. C. 198, 195 S. E. 615 (1938); *Woody v. Barnett*, 235 N. C. 73, 68 S. E. (2d) 810 (1952); *Potter v. Potter*, 251 N. C. 760, 112 S. E. (2d) 569 (1960); *Smith v. Moore*, 254 N. C. 186, 118 S. E. (2d) 436 (1961).

§ 136-70. Alteration or abandonment of cartways, etc., in same manner.—Cartways or other ways established under this article or heretofore established, may be altered, changed, or abandoned in like manner as herein provided for their establishment upon petition instituted by any interested party: Provided, that all cartways, tramways, or railways established for the removal of timber shall automatically terminate at the end of a period of five years, unless a greater time is set forth in the petition and the judgment establishing the same. (1798, c. 508, ss. 1, 2, 3, P. R.; 1834, c. 16, s. 1; R. C., c. 101, s. 38; Code, s. 2057; 1887, c. 46, s. 2; 1887, c. 266; Rev., s. 2694; C. S., s. 3837; 1931, c. 448.)

Cross Reference.—See "Local Modification" under § 136-68.

Editor's Note.—The 1931 amendment rewrote this section.

When Petitioner Acquires Servient Tract.—A petitioner who has acquired a right by order of the court, to have a cartway over the land of another, and who has after-

wards obtained title to the servient tenement, has a right to obstruct and discontinue such cartway. *Jacocks v. Newby*, 49 N. C. 266 (1857).

Cited in *Waldroup v. Ferguson*, 213 N. C. 198, 195 S. E. 615 (1938); *Woody v. Barnett*, 235 N. C. 73, 68 S. E. (2d) 810 (1952).

§ 136-71. Church roads and easements of public utility lines laid out on petition; procedure.—Necessary roads or easements and right of ways for electric light lines, power lines, water lines, sewage lines, and telephone lines leading to any church or other place of public worship may be established in the same manner as set forth in the preceding sections of this article upon petition of the duly constituted officials of such church. (1872-3, c. 189, ss. 1-3, 5; Code, ss. 2062, 2064; Rev., ss. 2687, 2689; C. S., s. 3838; 1931, c. 448; 1949, c. 382.)

Editor's Note.—Prior to the 1931 amendment the proceedings were before the board of supervisors. The 1949 amendment inserted the provision as to easements and rights of way for electric light and other lines.

Cited in *Waldroup v. Ferguson*, 213 N. C. 198, 195 S. E. 615 (1938).

ARTICLE 5.

Bridges.

§ 136-72. Load limits for bridges; liability for violations.—The State Highway Commission shall have authority to determine the maximum load limit for any and all bridges on the State highway system or on any county road systems, to be taken over under §§ 136-51 to 136-53, and post warning signs thereon, and it shall be unlawful for any person, firm, or corporation to transport any vehicle over and across any such bridge with a load exceeding the maximum load limit established by the Commission and posted upon said bridge, and any person, firm, or corporation violating the provisions of this section, shall, in addition to being guilty of a misdemeanor, be liable for any or all damages resulting to such bridge because of such violation, to be recovered in a civil action, in the nature of a penalty, to be brought by the Commission in the superior court in the county in which such bridge is located or in the county in which the person, firm, or corporation is domiciled; if such person, firm, or corporation causing the damage shall be a nonresident or a foreign corporation, such action may be brought in the Superior Court of Wake County. (1931, c. 145, s. 16; 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment for "State Highway and Public Works substituted "State Highway Commission" Commission."

§ 136-73. Duty as to bridges of millowners on, or persons ditching or enlarging ditches across, highways.—It shall be the duty of every owner of a water-mill which is situate on any public road, and also of every person who, for the purpose of draining his lands, or for any other purpose, shall construct any ditch, drain or canal across a public road, respectively, to keep at his own expense in good and sufficient repair all bridges that are or may be erected or attached to his milldam, immediately over which a public road may run; and also to erect and keep in repair all necessary bridges over such ditch, drain or canal on the highway, so long as they may be needed by reason of the continuance of said mill, or milldam, ditch, drain or canal. Nothing herein shall be construed to extend to any mill which was erected before the laying off of such road, unless the road was laid off by the request of the owner of the mill. The duty hereby imposed on the owner of the mill, and on the person cutting the drain or canal, shall continue on all subsequent owners of the mill, or other property, for the benefit of which the said ditch, drain or canal was cut. When any ditch or drain originally constructed across any public road, and bridged for the convenience and safety of the traveling public, has been or may hereafter be enlarged by the owner of adjacent lands to drain his lands, it shall be the duty of such owner to keep up and in repair all bridges crossing such ditch, drain or canal, and such charge shall be imposed upon all subsequent owners of the lands so drained: Provided, no public road or highway shall be cut except in accordance with provisions of § 136-93. (1817, c. 941, s. 1, P. R.; 1846, c. 95, s. 1; R. C., c. 101, s. 24; 1881, c. 290; Code, s. 2036; 1887, c. 261; Rev., s. 2697; C. S., s. 3795; 1943, c. 410.)

Editor's Note.—The 1943 amendment added the proviso at the end of the section. **Duty of One Constructing Ditch.**—When the proprietor of lands, for the pur-

pose of draining the same, shall construct a ditch, drain or canal across a public road, it shall be the duty of the said proprietor to build a bridge over said ditch, canal, etc., and keep the same in repair. *Nobles v. Langly*, 66 N. C. 287 (1872).

Owners of land cutting ditches through a highway are bound to maintain bridges over them. *Norfleet v. Cromwell*, 64 N. C. 1 (1870).

Priority of Road to Mill.—In an action for failing to keep a sufficient bridge over a canal cut across a public road, brought under this section, the plaintiff need not allege that the road was laid off before the mill was erected, in order to negative the proviso in that statute. *Wadsworth v. Stewart*, 97 N. C. 116, 2 S. E. 190 (1887).

Overseer Not Liable.—When a civil ac-

tion was brought against the overseer to recover damages alleged to have been incurred in consequence of his negligently permitting a bridge over a canal to become unsafe and in bad condition, it was competent for him to show that the canal had been dug across the public road by the proprietor of the land adjacent thereto, and for the purpose of draining the same, and that a bridge had been built over the canal by the proprietor of the land, and had been kept up by him for several years. *Nobles v. Langly*, 66 N. C. 287 (1872).

Stated in *Dodge v. State Highway, etc.*, Comm., 221 N. C. 4, 18 S. E. (2d) 706 (1942).

Cited in *Holmes v. Upton*, 192 N. C. 179, 134 S. E. 401 (1926).

§ 136-74. Liability for failure to maintain bridges; penalty and damages.—If any owner of a watermill situated on any public road, or any other person whose duty it is under this chapter to keep up and repair bridges built across any public road or across any ditch, drain, or canal, shall refuse or neglect to keep up and repair, or shall suffer to remain out of repair for the space of ten days, unless repair was prevented by unavoidable circumstances, any bridges which by law he may be required to keep up and repair, he shall be guilty of a misdemeanor and shall be liable for such damages as may be sustained. (1817, c. 941, ss. 2, 3, P. R.; R. C., c. 34, s. 40; R. C., c. 101, s. 25; 1876-7, cc. 90, 211; Code, ss. 1086, 2037; Rev., ss. 2703, 3772, 3773; C. S., s. 3796.)

Editor's Note.—As to liability of county commissioners, see *Holmes v. Upton*, 192 N. C. 179, 134 S. E. 401 (1926).

§ 136-75. Railroad companies to maintain bridges which they make necessary.—All railroad companies shall keep up, at their own expense, any bridge on or over public roads, when the building of such bridge was made necessary in establishing the railroad; and on failure to do so, shall forfeit and pay twenty-five dollars to any person who may sue for the same, and in addition shall be guilty of a misdemeanor. (1838, c. 5, ss. 1-4; R. C., c. 101, s. 35; Code, s. 2054; Rev., ss. 2700, 3775; C. S., s. 3797.)

§ 136-76. Counties to provide draws for vessels.—The county or counties which may erect bridges shall, by their boards of commissioners, provide and keep up draws in all such bridges, where the same may be necessary to allow the convenient passage of vessels. When any such draw shall be necessary to be erected for the passage of timber rafts, said draw may not exceed twenty feet in width. (R. C., c. 101, s. 34; Code, s. 2053; 1891, c. 168; Rev., s. 2698; C. S., s. 3798.)

Cross Reference.—As to liability of commissioners for neglect, see § 153-15.

It is within the discretion of the commissioners as to whether the draws in the bridges should turn both ways. *Lenoir County v. Crabtree*, 158 N. C. 357, 74 S. E. 105 (1912).

When Commissioner Excused for Failure to Provide Draws.—When in an action for the penalty under § 153-15, for defendant's failure and neglect, as county commissioner, to construct a draw in a county bridge across a river, it appeared

that there had been a question whether the stream above the bridge was navigable, and that during six months or more of the year the water was insufficient to float boats and that the draw had been put in as soon as the question of the navigability was determined by the engineering department of the United States government, it was proper for the trial judge to direct a verdict for the defendant. *Staton v. Wimberly*, 122 N. C. 107, 29 S. E. 63 (1898).

§ 136-77. Owner of bridge to provide draws on notice.—Owners of steamboats or other craft, who may intend to navigate any river or creek over which any

person may have a bridge, may give three months' notice of such intention in one of the public journals of the State, published nearest the river or creek intended to be navigated, and to the owner of the bridge, to construct a draw of sufficient width to allow the passage of the boat which is to be used; and if the owner of the bridge shall not, within three months from the date of the notice, construct the required draw, he shall forfeit and pay the person so notifying, if he be thereby prevented from navigating the watercourse, fifty dollars; and shall be further subject to the like penalty, under like circumstances, for every three months default thereafter. (1838-9, c. 5; 1846, c. 51, ss. 1, 2; R. C., c. 101, s. 32; Code, s. 2052; Rev., s. 2699; C. S., s. 3799.)

§ 136-78. Railroad companies to provide draws.—Railroad companies, erecting bridges across watercourses, shall attach and keep up good and sufficient draws, by which vessels may be allowed conveniently to pass. (1846, c. 51, ss. 1, 2; R. C., c. 101, s. 32; Code, s. 2051; Rev., s. 2701; C. S., s. 3800.)

§ 136-79. Solicitor to prosecute for injury to county bridges.—The solicitors of the superior court are authorized and directed to institute suits in the name of the State, in the counties wherein the injuries may be done, for the recovery of damages, against all persons who shall willfully or negligently injure any public bridge belonging to any county or counties, by forcibly running any decked vessel, boat or raft against the same; by cutting trees or timber in the rivers or creeks above such bridges, or by any other manner or means whatsoever. In case the injury is done to two counties, the action may be brought in either for the entire damage; and the damages which may be recovered shall be for the use of the county or counties injured; and if the plaintiff fail, the costs shall be paid by the county or counties for whose use the suit is brought, and in the same proportion in which the recovery would be divided. (1846, c. 11, ss. 1, 2; R. C., c. 101, s. 36; Code, s. 2055; Rev., s. 2705; C. S., s. 3801.)

Injunction May Issue.—The county commissioners, under the general powers granted by this section, may bring an action for an injunction to restrain the use of a nonfloatable stream for floatage of logs,

causing damage to a county bridge over such stream. *Commissioners v. Catawba Lumber Co.*, 115 N. C. 590, 20 S. E. 707 (1894).

§ 136-80. Fastening vessels to bridges misdemeanor.—If any person shall fasten any decked vessel or steamer to any bridge that crosses a navigable stream, he shall be guilty of a misdemeanor, and in the case of a bridge that crosses a county line, may be prosecuted in either county. (R. S., c. 104; R. C., c. 101, s. 31; 1858-9, c. 58, s. 1; Code, s. 2050; 1887, c. 93, s. 3; Rev., s. 3774; C. S., s. 3804.)

§ 136-81. Commission may maintain footways.—The State Highway Commission shall have the power to erect and maintain adequate footways over swamps, waters, chasms, gorges, gaps, or in any other places whatsoever, whenever said Commission shall find that such footways are necessary, in connection with the use of the highways, for the safety and convenience of the public. (1817, c. 940, ss. 1, 2, P. R.; R. C., c. 101, s. 17; Code, s. 2029; Rev., s. 2695; C. S., s. 3785; 1921, c. 2; 1931, c. 145; 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment for "State Highway and Public Works substituted "State Highway Commission" Commission."

ARTICLE 6.

Ferries and Toll Bridges.

§ 136-82. State Highway Commission to establish and maintain ferries.—The State Highway Commission is vested with authority to provide for the establishment and maintenance of ferries connecting the parts of the State highway system, whenever in its discretion the public good may so require, and to prescribe

and collect such tolls therefor as may, in the discretion of the Commission, be expedient.

To accomplish the purpose of this section said Commission is authorized to acquire, own, lease, charter or otherwise control all necessary vessels, boats, terminals or other facilities required for the proper operation of such ferries or to enter into contracts with persons, firms or corporations for the operation thereof and to pay therefor such reasonable sums as may in the opinion of said Commission represent the fair value of the public service rendered. (1927, c. 223; 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment for "State Highway and Public Works substituted "State Highway Commission" Commission."

§ 136-82.1. Authority to insure ferries operated by Commission.—The State Highway Commission is vested with authority to purchase hull insurance and protection and indemnity insurance on all vessels and boats owned, leased, chartered or otherwise controlled and operated by said Commission as ferries: Provided that the collision, protection and indemnity clauses of said insurance shall be limited so as to indemnify said Commission only for such liability as the said Commission might have under the provisions of article 31 of chapter 143 of the General Statutes and such liability as the said Commission might have to the United States for damage to United States property, for wreck removal, or otherwise. (1961, c. 486.)

§ 136-83. Control of county public ferries and toll bridges transferred to State.—The State Highway Commission shall succeed to all rights and duties vested in the county commissioners or county highway commissions on the thirty-first day of March, one thousand nine hundred and thirty-one, with respect to the maintenance and operation of any public ferries or toll bridges forming links in the county highway systems: Provided, that where there is an outstanding indebtedness against any such ferries or bridges, all tolls collected shall be turned over to the county treasurer to be applied to debt service until all indebtedness against such ferry or bridge has been discharged. (1931, c. 145, s. 38; 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment for "State Highway and Public Works substituted "State Highway Commission" Commission."

§ 136-84. State Highway Commission to fix charges.—The State Highway Commission is directed, authorized and empowered to fix and determine the charges to be made by all ferries and toll bridges connecting any State highway within the State of North Carolina, which said charges shall be uniform for the same service rendered. (Ex. Sess. 1921, c. 86, s. 1; C. S., s. 3821-(a); 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment for "State Highway and Public Works substituted "State Highway Commission" Commission."

§ 136-85. Extent of power to fix rates.—The State Highway Commission is vested with all the rights, powers and authorities granted the Utilities Commission in the hearing and fixing of rates for ferries and toll bridges now vested in it by law. (Ex. Sess. 1921, c. 86, s. 2; C. S., s. 3821(b); 1933, c. 134, s. 8, c. 172, s. 17; 1941, c. 97; 1943, c. 410; 1957, c. 65, s. 11.)

Editor's Note.—The 1943 amendment substituted the words "ferries and toll bridges" for the words "any purposes." The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

§ 136-86. Existing rights of appeal conferred.—All rights given any firm, person or corporation in any hearing before the Utilities Commission in the fixing of rates by way of appeal shall exist in all cases of charges fixed by the State Highway Commission under and by virtue of §§ 136-84 to 136-87. (Ex. Sess. 1921, c.

86, s. 3; C. S., s. 3821(c); 1933, c. 134, s. 8, c. 172, s. 17; 1941, c. 97; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment for "State Highway and Public Works substituted "State Highway Commission" Commission."

§ 136-87. Making of excessive charges a misdemeanor; punishment.—Any person, firm or corporation who shall charge any sum greater than the amount fixed by the State Highway Commission for crossing any ferry or toll bridge connecting any State highway within the State of North Carolina, shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding the sum of one hundred dollars or imprisoned not exceeding six months, or both in the discretion of the court. (Ex. Sess. 1921, c. 86, s. 4; C. S., s. 3821(d); 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment for "State Highway and Public Works substituted "State Highway Commission" Commission."

§ 136-88. Authority of county commissioners with regard to ferries and toll bridges; rights and liabilities of owners of ferries or toll bridges not under supervision of Commission.—Subject to the provisions of §§ 136-67, 136-99, and 153-198, the boards of commissioners of the several counties are vested, in regard to the establishment, operation, maintenance, and supervision of ferries and toll bridges on public roads not under the supervision and control of the State Highway Commission, with all the power and authority regarding ferries and toll bridges vested by law in county commissioners on the thirty-first day of March, one thousand nine hundred and thirty-one. And the owners or operators of ferries or toll bridges not under the supervision and control of the State Highway Commission shall be entitled to the same rights, powers, and privileges, and subject to the same duties, responsibilities and liabilities, to which owners or operators of ferries or toll bridges were entitled or were subject on the thirty-first day of March, one thousand nine hundred and thirty-one. (1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment for "State Highway and Public Works substituted "State Highway Commission" Commission."

§ 136-89. Safety measures; guard chains or gates.—Each and every person, firm or corporation, owning or operating a public ferry upon any sound, bay, river, creek or other stream, shall have securely affixed and attached thereto, at each end of the same, a detachable steel or iron chain, or in lieu thereof a steel or iron gate, and so affixed and arranged that the same shall be closed or fastened across the opposite end from the approach, whenever any motor vehicle, buggy, cart, wagon, or other conveyance shall be driven upon or shall enter upon the same; and shall be securely fastened or closed at each end of the ferry after such motor vehicle, buggy, cart, wagon, or other conveyance shall have been driven or shall have entered upon the same. And the said gates or chains shall remain closed or fastened, at each end, until the voyage across the stream upon which said ferry is operated shall have been completed. The State Highway Commission, as to ferries under its supervision, and the respective boards of county commissioners, as to other ferries, shall fix and determine a standard weight or size of chain, and a standard size, type, or character of gate, for use by said ferries, leaving optional with the said owner or operator the use of chains or gates.

Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor. (1923, c. 133; C. S., ss. 3825(a), 3825(b), 3825(c); 1927, c. 223; 1931, c. 145, s. 38; 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment for "State Highway and Public Works substituted "State Highway Commission" Commission."

ARTICLE 6A.

Carolina-Virginia Turnpike Authority.

§§ 136-89.1 to 136-89.11h: Repealed by Session Laws 1959, c. 25, s. 1.

ARTICLE 6B.

Turnpikes.

§§ 136-89.12 to 136-89.30: Repealed by Session Laws 1959, c. 25, s. 2.

ARTICLE 6C.

State Toll Bridges and Revenue Bonds.

§ 136-89.31. **Short title.**—This article shall be known, and may be cited, as the “State Bridge Revenue Bond Act.” (1953, c. 900, s. 1.)

§ 136-89.32. **Definitions.**—As used in this article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

- (1) The word “bonds” or the words “revenue bonds” or “bridge revenue bonds” shall mean revenue bonds of the Commission issued under the provisions of this article.
- (2) The word “bridge” shall mean any bridge acquired or constructed by the Commission under the provisions of this article, and shall embrace the substructure and superstructure thereof and the approaches thereto and such entrance plazas, interchanges, overpasses, underpasses, connecting highways (including elevated or depressed highways), toll houses, administration, storage and other buildings, and other structures as the Commission may determine to construct in connection therewith, together with all property, rights, easements and interests acquired by the Commission for the construction or the operation of such bridge.
- (3) The word “Commission” shall mean the State Highway Commission or, if said Commission shall be abolished, any board, body or Commission succeeding to the principal functions thereof or to whom the powers given by this article to the Commission shall be given by law.
- (4) The word “cost” as applied to any bridge shall embrace the cost of acquisition or construction, the cost of the acquisition of all land, rights of way, property, rights, easements and interests acquired by the Commission for such construction, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for one year after completion of construction, cost of traffic estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenues, other expenses necessary or incident to determining any such project, administrative expense, and such other expense as may be necessary or incident to the acquisition or construction of the bridge, the financing of such acquisition or construction and the placing of the bridge in operation. Any obligation or expense heretofore or hereafter incurred by the Commission for traffic surveys, borings, preparation of plans and specifications, and other engineering services in connection with the acquisition or construction of a bridge hereunder shall be regarded as a part of the cost of such bridge and shall be reimbursed to the Commission out of the proceeds of revenue bonds hereinafter authorized.
- (5) The word “owner” shall include all individuals, copartnerships, associations or corporations and also municipalities, political subdivisions and all public agencies and instrumentalities having any title or interest in

any property, rights, easements and interests authorized to be acquired by this article. (1953, c. 900, s. 2; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment for "State Highway and Public Works substituted "State Highway Commission" Commission" in subdivision (3).

§ 136-89.33. **General grant of powers.**—The Commission is hereby authorized and empowered, subject to the provisions of this article:

- (1) To acquire by purchase or by condemnation, construct, reconstruct, enlarge, improve, maintain, repair and operate any one or more bridges over any of the rivers or navigable waters which are wholly or partially within this State; provided, that no bridge shall be acquired or constructed under the provisions of this article unless such bridge shall be not less than one mile in length nor unless the construction cost of such bridge shall be not less than \$1,000,000;
- (2) To issue bridge revenue bonds of the State, to be known and designated as "State of North Carolina Toll Bridge Revenue Bonds" payable solely from the tolls and revenues pledged for their payment and to refund such bonds, all as provided in this article;
- (3) To combine for financing purposes any two or more bridges hereafter acquired, constructed or operated by the Commission;
- (4) To fix and revise from time to time and charge and collect tolls and other charges for transit over or the use of any bridge;
- (5) To establish rules and regulations for the use of any bridge;
- (6) To require, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this article;
- (7) To enter upon any lands and structures and upon lands under water, to make surveys, borings, soundings or examinations as it may deem necessary or convenient for the purposes of this article, and such entry shall not be deemed a trespass, nor shall any entry for such purposes be deemed an entry under any condemnation proceedings which may be then pending; provided, however, that the Commission shall make reimbursement for any actual damage resulting to such lands, structures and lands under water as a result of such activities;
- (8) To enter upon, use, occupy and dig up any street, alley, road, highway or other public place necessary to be entered upon, used or occupied in connection with the construction, reconstruction, enlargement, improvement, maintenance, repair or operation of any bridge;
- (9) To make and enter into contracts and agreements with other states or political subdivisions or agencies thereof with reference to approaches and connecting highways in any such state and to make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article;
- (10) To employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment, and to fix their compensation;
- (11) To receive and accept from any federal agency grants for or in aid of the construction of any bridge, and to receive and accept aid or contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made; and
- (12) To do all acts and things necessary or convenient to carry out the powers expressly granted in this article. (1953, c. 900, s. 3.)

§ 136-89.34. **Acquisition of property.**—The Commission is hereby authorized and empowered to acquire by purchase, whenever it shall deem such purchase expedient, from funds provided under the authority of this article, either within

or without the State, such lands, structures, property, rights, rights of way, franchises, easements and other interests in lands, including lands lying under water and riparian rights, as it may deem necessary or convenient for the construction or operation of any bridge, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof, and to take title thereto in the name of the State.

Whenever a reasonable price cannot be agreed upon, or whenever the owner is legally incapacitated or is absent, unknown or unable to convey valid title, the Commission is hereby authorized and empowered to acquire by condemnation or by the exercise of the power of eminent domain any lands, property, rights, rights of way, franchises, easements and other property, including public lands, parks, playgrounds, reservations, highways or parkways, or part thereof or rights therein, of any person, copartnership, association, railroad, public service, public utility or other corporation, or municipality or political subdivision deemed necessary or convenient for the construction or the efficient operation of any bridge or necessary in the restoration of public or private property damaged or destroyed, and in so doing the ways, means, methods and procedure of chapter 40 of the General Statutes of North Carolina, entitled "Eminent Domain", shall be used by the Commission as near as the same is suitable for the purposes of this section, and in all instances the general and special benefits shall be assessed as offsets against damages. In case condemnation shall become necessary the Commission is authorized to enter the lands or other property and take possession of the same prior to bringing the proceedings for condemnation, and prior to the payment of the money for such property. In the event the owner or owners shall appeal from the report of the commissioners, it shall not be necessary for the Commission to deposit the money assessed with the clerk, but it may proceed and use the property to be condemned until the final determination of the action.

The State hereby consents to the use of all lands owned by it, including lands lying under water, which are deemed by the Commission to be necessary for the construction or operation of any bridge. (1953, c. 900, s. 4.)

§ 136-89.35. Bridge revenue bonds.—The Commission is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of bridge revenue bonds of the State for the purpose of paying all or any part of the cost of any one or more bridges; provided, however, that no such bonds shall be issued unless the Commission shall make a finding in such resolution, or in a separate resolution adopted by the Commission prior to the issuance of such bonds, that (i) sufficient funds for paying such cost are not available to the Commission from appropriations or other State or federal funds, and (ii) the revenues of such bridge or bridges, as the case may be, as estimated by the Commission following traffic surveys made by competent engineers for the Commission, after providing for the payment of the cost of maintenance and operation thereof and reserves therefor, will be sufficient to provide for the payment of such bonds and the interest thereon as the same shall fall due. The principal of and the interest on such bonds shall be payable solely from the funds herein provided for their payment.

The bonds of each issue shall be dated, shall bear interest at such rate or rates not exceeding five per centum (5%) per annum, shall mature at such time or times not exceeding forty years from their date or dates, as may be determined by the Commission, and may be made redeemable before maturity, at the option of the Commission, at such price or prices and under such terms and conditions as may be fixed by the Commission prior to the issuance of the bonds. The Commission shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. The bonds shall be signed by the chairman of the Commission and the official seal of the Commission shall be impressed thereon, attested by the secretary or other officer of the Commission desig-

nated by the Commission, and any coupons attached thereto shall bear the facsimile signature of said chairman. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The bonds may be issued in coupon or in registered form, or both, as the Commission may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Commission may sell such bonds in such manner and for such price as it may determine will best effect the purposes of this article, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than five per centum (5%) per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized, and shall be disbursed in such manner and under such restrictions, if any, as the Commission may provide in the resolution authorizing the issuance of such bonds or in the trust agreement, hereinafter mentioned, securing the same. If the proceeds of such bonds issued for the purpose of paying the cost of construction of any bridge or bridges, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, or any trust agreement securing such bonds, may contain such limitations upon the issuance of additional revenue bonds as the Commission may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the Commission may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Commission may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost.

Bonds may be issued under the provisions of this article without obtaining the consent of any department, division, commission, board, bureau or agency of the State, and without any other proceedings, conditions or things which are specifically required by this article. (1953, c. 900, s. 5.)

§ 136-89.36. Credit of State not pledged.—Revenue bonds issued under the provisions of this article shall not be deemed to constitute a debt of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the funds provided therefor from tolls and revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the State nor the Commission shall be obligated to pay the same or the interest thereon except from the special fund provided therefor from tolls and revenues under this article, and that the faith and credit of the State are not pledged to the payment of the principal of or the interest on such bonds. The issuance of revenue bonds under the provisions of this article shall not directly or indirectly or contingently obligate the State to levy or to pledge any form of taxation whatever therefor. (1953, c. 900, s. 6.)

§ 136-89.37. Trust agreement.—In the discretion of the Commission any bonds issued under the provisions of this article may be secured by a trust agree-

ment by and between the Commission and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the tolls and other revenues to be received, but shall not convey or mortgage any bridge or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Commission in relation to the acquisition of property and the construction, enlargement, improvement, maintenance, repair, operation and insurance of the bridge or bridges in connection with which such bonds shall have been authorized, the rates of toll to be charged, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Commission. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Commission may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the operation of the bridge or bridges. (1953, c. 900, s. 7.)

§ 136-89.38. Revenues.—The Commission is hereby authorized to fix, revise, charge and collect tolls for the use of any bridge acquired or constructed under the provisions of this article. Such tolls shall be so fixed and adjusted with respect to the aggregate of tolls from any such bridge or bridges as to provide a fund sufficient, with other revenues, if any, to pay (i) the cost of maintaining, repairing and operating such bridge or bridges and any other expenses payable from such tolls and (ii) the principal of and the interest on the bonds which are payable from such tolls as the same shall become due and payable, and to create reserves for such purposes. Such tolls shall not be subject to supervision or regulation by any other department, division, commission, board, bureau or agency of the State. The tolls and all other revenues derived from the bridge or bridges in connection with which the bonds of any issue shall have been issued, except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to and charged with the payment of the principal of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the tolls and other revenues or other moneys so pledged and thereafter received by the Commission shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Commission, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Commission. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another.

Notwithstanding any of the foregoing provisions of this section the Commission

may, unless prohibited by any provision of the Constitution of North Carolina, covenant in such resolution or such trust agreement to pay the cost of maintaining, repairing and operating any bridge or bridges acquired or constructed under the provisions of this article, and, inasmuch as such bridge or bridges will at all times belong to the State, such covenant shall have the force of contract between the State and the holders of the bonds issued for such bridge or bridges. (1953, c. 900, s. 8.)

§ 136-89.39. Trust funds.—All moneys received pursuant to the authority of this article, whether as proceeds from the sale of bonds or as to revenues, shall be deemed to be trust funds to be held and applied solely as provided in this article. The resolution authorizing the bonds of any issue or the trust agreement securing such bonds shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this article and such resolution of trust agreement may provide. (1953, c. 900, s. 9.)

§ 136-89.40. Remedies.—Any holder of bonds issued under the provisions of this article or any of the coupons appertaining thereto, and the trustees under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this article or by such trust agreement or resolution to be performed by the Commission or by any officer thereof, including the fixing, charging and collecting of tolls. (1953, c. 900, s. 10.)

§ 136-89.41. Negotiable instruments.—Notwithstanding any of the foregoing provisions of this article or any recitals in any bonds issued under the provisions of this article, all such bonds shall be deemed to be negotiable instruments under the laws of this State. (1953, c. 900, s. 11.)

§ 136-89.42. Exemption from taxation.—The exercise of the powers granted by this article will be in all respects for the benefit of the people of the State, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of bridges by the Commission will constitute the performance of essential governmental functions, the Commission shall not be required to pay any taxes or assessments upon any bridge or any property acquired or used by the Commission under the provisions of this article or upon the income therefrom, and the bonds issued under the provisions of this article, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation within the State. (1953, c. 900, s. 12.)

§ 136-89.43. Bonds eligible for investment.—Bonds issued by the Commission under the provisions of this article are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law. (1953, c. 900, s. 13.)

§ 136-89.44. Bridge revenue refunding bonds.—The Commission is hereby authorized to provide for the issuance of bridge revenue refunding bonds of the State for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemp-

tion premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if the Commission shall so determine, for the additional purpose of constructing improvements, extensions or enlargements of the bridge or bridges in connection with which the bonds to be refunded shall have been issued. The Commission is further authorized to provide for the issuance of bridge revenue bonds of the State for the combined purpose of

- (1) Refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and
- (2) Paying all or any part of the cost of any additional bridge or bridges.

The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Commission in respect of the same, shall be governed by the provisions of this article insofar as the same may be applicable. (1953, c. 900, s. 14.)

§ 136-89.45. Additional method.—The foregoing sections of this article shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby, and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, that the issuance of bridge revenue bonds or bridge revenue refunding bonds under the provisions of this article need not comply with requirements of any other law applicable to the issuance of bonds. (1953, c. 900, s. 15.)

§ 136-89.46. Article liberally construed.—This article, being necessary for the welfare of the State and its inhabitants, shall be liberally construed to effect the purposes thereof. (1953, c. 900, s. 16.)

§ 136-89.47. Inconsistent laws inapplicable.—All other laws or parts thereof inconsistent herewith are hereby declared to be inapplicable to the provisions of this article. (1953, c. 900, s. 18.)

ARTICLE 6D.

Controlled-Access Facilities.

§ 136-89.48. Declaration of policy.—The General Assembly hereby finds, determines, and declares that this article is necessary for the immediate preservation of the public peace, health and safety, the promotion of the general welfare, the improvement and development of transportation facilities in the State, the elimination of hazards at grade intersections, and other related purposes. (1957, c. 993, s. 1.)

§ 136-89.49. Definitions.—When used in this article:

- (1) "Commission" means the State Highway Commission.
- (2) "Controlled-access facility" means a State highway, or section of State highway, especially designed for through traffic, and over, from or to which highway owners or occupants of abutting property, or others, shall have only a controlled right or easement of access.
- (3) "Frontage road" means a way, road or street which is auxiliary to and located on the side of another highway, road or street for service to abutting property and adjacent areas and for the control of access to such other highway, road or street. (1957, c. 993, s. 2.)

A "controlled-access facility," as defined in this section, is a limited access highway where the Highway Commission acquires the legal right to cut off entirely the abutting owner's right of direct access to and

from the highway on which his property abuts. *Barnes v. North Carolina State Highway Comm.*, 257 N. C. 507, 126 S. E. (2d) 732 (1962).

§ 136-89.50. Authority to establish controlled-access facilities.—The Commission may designate, establish, abandon, improve, construct, maintain and regulate

controlled-access facilities as a part of the State Highway System, National System of Interstate Highways, and Federal Aid Primary System whenever the Commission determines that traffic conditions, present or future, justify such controlled-access facilities, or the abandonment thereof. (1957, c. 993, s. 3.)

§ 136-89.51. Design of controlled-access facility.—The Commission is authorized so to design any controlled-access facility and so to regulate, restrict, or prohibit access as best to serve the traffic for which such facility is intended. In this connection the Commission is authorized to divide and separate any controlled-access facility into separate roadways by the construction of raised curbsings, central dividing sections, or other physical separations, or by designating such separate roadways by signs, markers, or stripes, and the proper lane for such traffic by appropriate signs, markers, stripes, and other devices. No person shall have any right of ingress or egress to, from or across controlled-access facilities to or from abutting lands, except at such designated points at which access may be permitted, upon such terms and conditions as may be specified from time to time by the Commission. (1957, c. 993, s. 4.)

§ 136-89.52. Acquisition of property and property rights.—For the purposes of this article, the Commission may acquire private or public property and property rights for controlled-access facilities and service or frontage roads, including rights of access, air, view and light, by gift, devise, purchase, or condemnation in the same manner as now or hereafter authorized by law to acquire such property or property rights in connection with highways. The property rights acquired under the provisions of this article may be in fee simple or an appropriate easement of right of way in perpetuity. In connection with the acquisition of property or property rights for any controlled-access facility or portion thereof, or frontage road in connection therewith, the Commission may, in its discretion, with the consent of the landowner, acquire an entire lot, block, or tract of land, if by so doing, the interests of the public will be best served, even though said entire lot, block, or tract is not immediately needed for the right of way proper. Along new highway locations abutting property owners shall not be entitled, as a matter of right, to access to such new locations; however, the denial of such rights of access shall be considered in determining general damages. (1957, c. 993, s. 5.)

§ 136-89.53. New and existing facilities; grade crossing eliminations.—The Commission may designate and establish controlled-access highways as new and additional facilities or may designate and establish an existing street or highway as included within a controlled-access facility. When an existing street or highway shall be designated as and included within a controlled-access facility the owners of land abutting such existing street or highway shall be entitled to compensation for the taking of or injury to their easements of access. The Commission shall have authority to provide for the elimination of intersections at grade of controlled-access facilities with existing State highways and county roads, and city and town streets, by grade separation or frontage road, or by closing off such roads and streets, or other public ways at the right-of-way boundary line of such controlled-access facility; and after the establishment of any controlled-access facility, no highway or street which is not part of said facility shall intersect the same at grade. No street or any city or town and no State highway, county road, or other public way shall be opened into or connected with any such controlled-access facility without the consent and previous approval of the Commission. Such consent and approval shall be given only if the public interest shall be served thereby. (1957, c. 993, s. 6.)

§ 136-89.54. Authority of local units to consent.—The Commission, as the highway authority of the State, and the governing body of any county, city or town are authorized, after a public hearing to be held in the county affected, to enter into agreements with each other, and the Commission is authorized to enter into agreements with the federal government, respecting the financing, planning, establish-

ment, improvement, maintenance, use, regulations, or vacation of controlled-access facilities or other public ways in their respective jurisdictions, to facilitate the purposes of this article. (1957, c. 993, s. 7.)

§ 136-89.55. Local service roads.—In connection with the development of any controlled-access facility the Commission is authorized to plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service or frontage roads and streets or to designate as local service or frontage roads and streets any existing road or street, and to exercise jurisdiction over service or frontage roads in the same manner as is authorized over controlled-access facilities under the terms of this article, if in its opinion such local service or frontage roads and streets are necessary or desirable; provided, however, that after a local service or frontage road has been established the same shall not be vacated or abandoned without the consent of the abutting property owners so long as the controlled-access facility is maintained as such facility, and the Commission shall not have any authority to control or restrict the right of access of abutting property owners from their property to such local service or frontage roads or streets, except such authority as the Commission has with respect to primary and secondary roads. Such local service or frontage roads or streets shall be of appropriate design, and shall be separated from the controlled-access facility proper by means of all devices designated as necessary or desirable. (1957, c. 993, s. 8.)

§ 136-89.56. Commercial enterprises.—No commercial enterprises or activities shall be authorized or conducted by the Commission, or the governing body of any city or town, within or on the property acquired for or designated as a controlled-access facility, as defined in this article. In order to permit the establishment of adequate fuel and other service facilities by private owners or their lessees for the users of a controlled-access facility, the Commission shall permit access to service or frontage roads within the publicly owned right-of-way of any controlled-access facility established or designated as provided in this article, at points which, in the opinion of the Commission, will best serve the public interest. The location of such fuel and other service facilities may be indicated to the users of the controlled-access facilities by appropriate signs, the size, style, and specifications of which shall be determined by the Commission. (1957, c. 993, s. 9.)

§ 136-89.57. Unlawful use of limited-access facilities; penalties.—It shall be unlawful for any person:

- (1) To drive a vehicle over, upon or across any curb, central dividing section or other separation or dividing line on any controlled-access facility;
- (2) To make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb section, separation, or line on any controlled-access facility;
- (3) To drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line on any controlled-access facility;
- (4) To drive any vehicle into the controlled-access facility from a local service or frontage road except through an opening provided for that purpose in the dividing curb, dividing section or dividing line which separates such service or frontage road from the controlled-access facility proper.

Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not in excess of one hundred dollars (\$100.00), or by imprisonment not in excess of sixty (60) days, or both such fine and imprisonment, in the discretion of the court. (1957, c. 993, s. 10.)

§ 136-89.58. Unlawful use of National System of Interstate and Defense Highways.—On those sections of highways which are or become a part of the

National System of Interstate and Defense Highways it shall be unlawful for any person:

- (1) To drive a vehicle over, upon or across any curb, central dividing section or other separation or dividing line on said highways.
- (2) To make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb section, separation, or line on said highways.
- (3) To drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line on said highways.
- (4) To drive any vehicle into the main travel lanes or lanes of connecting ramps or interchanges except through an opening or connection provided for that purpose by the State Highway Commission.
- (5) To stop, park, or leave standing any vehicle, whether attended or unattended, on any part or portion of the right of way of said highways, except in the case of an emergency or as directed by a peace officer, or as designated parking areas.
- (6) To willfully damage, remove, climb, cross or breach any fence erected within the rights of way of said highways.

Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not in excess of one hundred dollars (\$100.00) or by imprisonment not in excess of sixty (60) days, or by both such fine and imprisonment, in the discretion of the court. (1959, c. 647.)

ARTICLE 6E.

North Carolina Turnpike Authority.

§ 136-89.59. Turnpike projects.—In order to provide for the construction of modern highways and express highways or superhighways embodying safety devices, including center division, ample shoulder widths, long-sight distances, multiple lanes in each direction and grade separation at intersections with other highways and railroads, and thereby facilitate vehicular traffic, provide better connection between the highway system of North Carolina and the highway systems of the adjoining states, remove many of the present handicaps and hazards on the congested highways in the State and promote the agricultural and industrial development of the State, the North Carolina Turnpike Authority (hereinafter created), is hereby authorized and empowered to construct, maintain, repair and operate turnpike projects (as hereinafter defined), and to issue revenue bonds of the Authority, payable solely from revenues, to finance such projects. (1963, c. 757, s. 1.)

§ 136-89.60. Credit of State not pledged.—Revenue bonds issued under the provisions of the article shall not be deemed to constitute a debt of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but all such bonds shall be payable solely from the funds herein provided therefor from revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the State nor the Authority shall be obligated to pay the same or the interest thereon except from revenues of the project or projects for which they are issued and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds.

All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which money shall have been provided under the provisions of this article. (1963, c. 757, s. 2.)

§ 136-89.61. North Carolina Turnpike Authority.—There is hereby created a body politic and corporate to be known as the “North Carolina Turnpike Authority.” The Authority is hereby constituted a public agency, and the exercise by the Authority of the powers conferred by this article in the construction, operation and maintenance of turnpike projects shall be deemed and held to be the performance of an essential governmental function.

The North Carolina Turnpike Authority shall consist of four members, including the chairman of the State Highway Commission who shall be a member *ex officio*, and three members appointed by the Governor who shall serve for terms expiring on July 1, 1964, July 1, 1965, and July 1, 1966, respectively, the term of each to be designated by the Governor, and until their respective successors shall be duly appointed and qualified. The successor of each of the three appointed members shall be appointed for a term of four (4) years but any person appointed to fill a vacancy shall be appointed to serve only for the unexpired terms, and a member of the Authority shall be eligible for reappointment. Each appointed member of the Authority may be removed by the Governor for misfeasance, malfeasance, or wilful neglect of duty, but only after reasonable notice and a public hearing, unless the same are in writing expressly waived. Each appointed member of the Authority before entering upon his duties shall take an oath to administer the duties of his office faithfully and impartially, and a record of each oath shall be filed in the office of the Secretary of State.

The Authority shall elect one of the appointed members as chairman of the Authority and another as vice-chairman, and shall also elect a secretary-treasurer who need not be a member of the Authority. The chairman, vice-chairman and secretary-treasurer shall serve as such officers at the pleasure of the Authority. Three members of the Authority shall constitute a quorum and the affirmative vote of three members shall be necessary for any action taken by the Authority. No vacancy in the membership of the Authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

Before the issuance of any turnpike revenue bonds under the provisions of this article, each member of the Authority shall execute a surety bond in the penal sum of twenty-five thousand dollars (\$25,000.00) and the secretary-treasurer shall execute a surety bond in the penal sum of fifty thousand dollars (\$50,000.00), each such surety bond to be conditioned upon the faithful performance of the duties of his office, to be executed by a surety company authorized to transact business in the State as surety and to be approved by the Attorney General and filed in the office of the Secretary of State.

The chairman of the Authority shall receive the sum of fifteen dollars (\$15.00) for each day or part thereof of service, but not exceeding three thousand dollars (\$3,000.00) in any one (1) year. The other appointed members of the Authority shall receive the sum of ten dollars (\$10.00) for each day or part thereof of service, but not exceeding two thousand dollars (\$2,000.00) in any one (1) year. The chairman of the State Highway Commission shall serve as a member of the Authority without extra compensation for such service. Each member shall be reimbursed for his actual expenses necessarily incurred in the performance of his duties. (1963, c. 757, s. 3.)

§ 136-89.62. Definitions.—As used in this article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

- (1) The word “Authority” shall mean the North Carolina Turnpike Authority, created by § 136-89.61, or, if said Authority shall be abolished, the board, body or commission succeeding to the principal functions thereof or to whom the powers given by this article to the Authority shall be given by law.
- (2) The word “bonds” or the words “turnpike revenue bonds” shall mean

revenue bonds of the Authority authorized under the provisions of this article.

- (3) The word "cost" as applied to a turnpike project shall embrace the costs of construction, the cost of the acquisition of all land, rights of way, property, rights, easements and interests acquired by the Authority for such construction, the cost of demolishing or removing any buildings or structures on land so acquired, including the costs of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if deemed advisable by the Authority, for a period not exceeding one (1) year after completion of construction, cost of traffic estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing any such project, administrative expense, and such other expense as may be necessary or incident to the construction of the project, the financing of such construction and the placing of the project in operation. Any obligation of expense hereafter incurred by the State Highway Commission with the approval of the Authority for traffic surveys, borings, preparation of plans and specifications, and other engineering services in connection with the construction of a project shall be regarded as a part of the cost of such project and shall be reimbursed to the Commission out of the proceeds of turnpike revenue bonds hereinafter authorized.
- (4) The word "owner" shall include all individuals, copartnerships, associations or corporations having any title or interest in any property, rights, easements and interests authorized to be acquired by this article.
- (5) The word "project" or the words "turnpike project" shall mean any highway, express highway or superhighway, toll road constructed under the provisions of this article by the Authority, including all tunnels, overpasses, underpasses, interchanges, entrance places, approaches, tollhouses, service stations, and administration, storage and other buildings, and facilities which the Authority may deem necessary for the operation of such project, together with all property, rights, easements, and interests which may be acquired by the Authority for the construction or the operation of such project.
- (6) The words "public highways" shall include all public highways, roads and streets in the State, whether maintained by the State or by any county, city, town or other political subdivision. (1963, c. 757, s. 4.)

§ 136-89.63. **General grant of powers.**—The Authority is hereby authorized and empowered:

- (1) To adopt bylaws for the regulation of its affairs and the conduct of its business;
- (2) To adopt an official seal and alter the same at pleasure;
- (3) To maintain an office at such place or places within the State as it may designate;
- (4) To sue in its own name, and to enforce by mandamus or other proper legal remedies all legal rights or causes of action of the Authority with other public bodies, corporations, or persons.
- (5) To construct, maintain, repair and operate turnpike projects at such locations within the State as may be determined by the Authority and approved by the State Highway Commission; provided, further, that no turnpike or toll road shall be constructed or operated in this State unless and until a certificate of approval be first obtained from the State Highway Commission certifying that the operation of such toll road or turn-

- pike will not be harmful or injurious to the secondary or primary roads embraced in the system of State highways;
- (6) To issue turnpike revenue bonds of the Authority for any of its corporate purposes, payable solely from the tolls and revenues pledged for their payment, and to refund its bonds, all as provided in this article;
 - (7) To fix and revise from time to time and charge and collect tolls for transit over each turnpike project constructed by it;
 - (8) To establish rules and regulations and ordinances for the use of any such turnpike project;
 - (9) To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this article;
 - (10) To designate the location, and establish, limit and control such points of ingress to and egress from each turnpike project as may be necessary or desirable in the judgment of the Authority to insure the proper operation and maintenance of such project, and to prohibit entrance to such project from any point or points not so designated;
 - (11) To make and enter into contracts and operating agreements with similar organizations or agencies of other states and to make and enter into all other contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article;
 - (12) To employ consulting engineer, attorneys, accountants, construction experts, superintendent, managers, and such other employees and agents as may be necessary in its judgment, and to fix their compensation, and to employ financial experts and fiscal agents with the advice and approval of the Local Government Commission; provided, however, that the provisions of G. S. 159-20 shall be complied with to the extent that the same shall be applicable;
 - (13) To receive and accept from any federal agency grants for or in aid of the construction of any turnpike project, and to receive and accept aid or contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made; and
 - (14) To do all acts and things necessary or convenient to carry out the powers expressly granted in this article. (1963, c. 757, s. 5.)

§ 136-89.64. Acquisition of property.—The Authority is hereby authorized and empowered to acquire by purchase, whenever it shall deem such purchase expedient, solely from funds provided under the authority of this article, such lands, structures, property, rights, rights of way, franchises, easements and other interests in lands which are located within the State, as it may deem necessary or convenient for the construction and operation of any project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof, and to take title thereto in the name of the Authority.

Whenever a reasonable price cannot be agreed upon, or whenever the owner is legally incapacitated or is absent, unknown or unable to convey valid title, the Authority is hereby authorized and empowered to acquire by condemnation or by the exercise of the power of eminent domain any lands, property, rights, rights of way, franchises, easements and other property, including public lands or parts thereof or rights therein, of any person, copartnership, association, railroad, public service, public utility or other corporation, municipality or political subdivision, deemed necessary or convenient for the construction or the efficient operation of any project. The amount and size of any lands, property, rights of way, easements and other property to be obtained by the Authority under its exercise of the power of eminent domain shall first be determined and approved by the State Highway Commission. In the exercise of its power of condemnation and eminent domain, the ways, means, methods, and procedure of article 9 of chapter 136 of the General Statutes shall be

used by the Authority insofar as the same are applicable. The measure of damages as set forth in G. S. 136-112 shall apply to acquisition by the Authority. Title to any property acquired by the Authority shall be taken in the name of the Authority.

If the owner, lessee or occupier of any property to be condemned shall refuse to remove his personal property therefrom or give up possession thereof, the Authority may proceed to obtain possession in any manner now or hereafter provided by law.

With respect to any railroad property or right of way upon which railroad tracks are located, any powers of condemnation or of eminent domain may be exercised to acquire only an easement interest therein which shall be located either sufficiently far above or sufficiently far below the grade of any railroad track or tracks upon such railroad property so that neither the proposed project nor any part thereof, including any bridges, abutments, columns, supporting structures and appurtenances, nor any traffic upon it shall interfere in any manner with the use, operation or maintenance of the trains, tracks, works or appurtenances or other property of the railroad nor endanger the movement of the trains or traffic upon the tracks of the railroad. Prior to the institution of condemnation proceedings for such easement over or under such railroad property or right of way, plans and specifications of the proposed project showing compliance with the above mentioned above or below grade requirements and showing sufficient and safe plans and specifications of such overhead or undergrade structure and appurtenances shall be submitted to the railroad for examination and approval. If the railroad fails or refuses within thirty (30) days to approve the plans and specifications so submitted, the matter shall be submitted to the North Carolina Utilities Commission whose decision, arrived at after due consideration in accordance with its usual procedure, shall be final as to the sufficiency and safety of such plans and specifications and as to such elevations or distances above or below the tracks. Such overhead or undergrade structures and appurtenances shall be constructed only in accordance with such plans and specifications and in accordance with such elevations or distances above or below the tracks so approved by the railroad or the North Carolina Utilities Commission as the case may be. A copy of the plans and specifications approved by the railroad or the North Carolina Utilities Commission shall be filed as an exhibit with the petition for condemnation.

Whenever it shall be found necessary to cross any electric power or telephone or telegraph lines, any powers of condemnation or eminent domain may be exercised only to acquire an easement thereover without any unnecessary inference with the continued use and operation of such lines. The Authority shall pay any and all costs which may be necessary to make such crossings reasonably safe and usable. If the Authority and the owner of such power, telephone or telegraph lines are unable to agree upon the terms and conditions as to the payment of damages and costs involved in such matters, and the way and manner in which such crossings shall be made, this shall be determined by the North Carolina Utilities Commission upon petition filed by the Authority and after notice and hearing as to the other utilities concerned, in accordance with such rules and procedures as may be prescribed by the said Commission. Before using such easement as may be acquired by the Authority as herein provided it shall fully comply with such agreement as shall be made by it with any such utility or fully comply with any conditions set forth in the order of condemnation. (1963, c. 757, s. 6.)

§ 136-89.65. Incidental powers.—The Authority, with the approval of the State Highway Commission shall have power to construct grade separations at intersections of any turnpike project with public highways and to change and adjust the lines and grades of such highways so as to accommodate the same to the design of such grade separation. The cost of such grade separations and any damage incurred in changing and adjusting the lines and grades of such highways shall be ascertained and paid by the Authority as a part of the cost of such turnpike project.

If the Authority shall find it necessary to change the location of any portion of

any public highway, it shall cause the same to be reconstructed at such location as the Authority shall deem most favorable and of substantially the same type and in as good condition as the original highway. The cost of such reconstruction and any damage incurred in changing the location of any such highway shall be ascertained and paid by the Authority as a part of the cost of such turnpike project.

Any public highway affected by the construction of any turnpike project may be vacated or relocated by the Authority in the manner now provided by law for the vacation or relocation of public roads, and any damages awarded on account thereof shall be paid by the Authority as a part of the cost of such project; provided where any part of an existing public road is vacated, no charge may be made for the use of such vacated public road where the same becomes a part of a turnpike project.

In addition to the foregoing powers the Authority and its authorized agents and employees may enter upon any lands and premises in the State for the purpose of making surveys, soundings, drillings and examinations as they may deem necessary or convenient for the purposes of this article, and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation proceedings which may be then pending. The Authority shall make reimbursement for any actual damage resulting to such lands, waters and premises as a result of such activities, and the owner, or owners, if necessary, shall be entitled to proceed under the provisions of § 136-111 of the General Statutes to recover for such damage.

The Authority shall also have power to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation, and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances (herein called "public utility facilities") of any public utility in, on, along, over or under any turnpike project. Whenever the Authority shall determine that it is necessary that any such public utility facility which now is, or hereafter may be, located in, on, along, over or under any turnpike project should be relocated in such turnpike project, or should be removed from such turnpike project, the public utility owning or operating such facilities shall relocate or remove the same in accordance with the order of the Authority; provided, however, that the cost and expenses of such relocation or removal, including the cost of installing such facilities in a new location or new locations, and the cost of any lands, or any rights or interests in lands, and any other rights, acquired to accomplish such relocation or removal, shall be ascertained and paid by the Authority as a part of the cost of such turnpike project. In case of any such relocation or removal of facilities, the public utility owning or operating the same, its successors or assigns, may maintain and operate such facilities, with the necessary appurtenances, in the new location or new locations, for as long a period, and upon the same terms and conditions, as it had the right to maintain and operate such facilities in their former location or locations.

The State hereby consents to the use of all lands owned by it which are deemed by the Authority to be necessary for the construction or operation of any turnpike project; provided no public property may be used except upon the approval of the State Highway Commission, and with the consent of the Governor and the Council of State acting together. (1963, c. 757, s. 7.)

§ 136-89.66. Turnpike revenue bonds.—The Authority is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of turnpike revenue bonds of the Authority for the purpose of paying all or any part of the cost of any one or more turnpike projects. The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at such rate or rates not exceeding six per centum (6%) per annum, shall mature at such time or times not exceeding forty (40) years from their date or dates, as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may

be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form of the bonds, including any interest coupons to be attached thereto and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. The bonds shall be signed by the chairman of the Authority or shall bear his facsimile signature, and the official seal of the Authority shall be impressed thereon and attested by the secretary-treasurer of the Authority, and any coupons attached thereto shall bear the facsimile signature of the chairman of the Authority. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All bonds issued under the provisions of this article shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the State. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest.

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the turnpike project or projects for which such bonds shall have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed such cost, the surplus shall be deposited to the credit of the sinking fund for such bonds.

Prior to the preparation of definitive bonds the Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost.

All revenue bonds issued under the provisions of this article shall be approved and sold by the Local Government Commission in the same manner as municipal bonds are approved and sold by the Local Government Commission, except that the notice of the proposed sale shall be published at least once at least ten (10) days before the date fixed for the receipt of bids in a newspaper having a general circulation in the city of Raleigh and, in the discretion of the Commission, in some other newspaper of general circulation published in the State and in a journal published in New York City devoted primarily to the subject of municipal bonds. If no bid is received, upon such published notice, which is a legal bid and legally acceptable under such notice, the bonds may be sold at private sale at any time within thirty (30) days after the date set for receiving bids given in such notice.

The Local Government Commission may sell revenue bonds issued under the provisions of this article at less than par and accrued interest, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than six per centum (6%) per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any such bonds prior to maturity. (1963, c. 757, s. 8.)

§ 136-89.67. **Trust agreement.**—In the discretion of the Authority any bonds issued under the provisions of this article may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the tolls and other revenues to be received, but shall not convey or mortgage any turnpike project or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including, covenants setting forth the duties of the Authority in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of the turnpike project or projects in connection with which such bonds shall have been authorized, the rates of toll to be charged, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the operation of the turnpike project or projects. (1963, c. 757, s. 9.)

§ 136-89.68. **Revenues.**—The Authority is hereby authorized to fix, revise, charge and collect tolls for the use of each turnpike project and the different parts or sections thereof, and to contract with any person, partnership, association or corporation desiring the use of any part thereof, including the right of way adjoining the paved portion, for placing thereon telephone, telegraph, electric light or power lines, gas stations, garages, stores, hotels, and restaurants, or for any other purpose except for tracks for railroad or railway use, and to fix the terms, conditions, rents and rates of charges for such use; provided that a sufficient number of gasoline stations should be authorized to be established in each service area along any such turnpike project to permit reasonable competition by private business in the public interest. Such tolls shall be so fixed and adjusted in respect to the aggregate of tolls from the turnpike project or projects in connection with which the bonds of any issue shall have been issued as to provide a fund sufficient with other revenues, if any, to pay (i) the cost of maintaining, repairing and operating such turnpike project or projects and (ii) the principal of and the interest on such bonds as the same shall become due and payable, and to create reserves for such purposes. Such tolls shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the State. The tolls and all other revenues derived from the turnpike project or projects in connection with which the bonds of any issue shall have been issued, except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the tolls or other revenues or other money so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all

parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of money to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another. (1963, c. 757, s. 10.)

§ 136-89.69. Trust funds.—All moneys received pursuant to the authority of this article, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this article. The resolution authorizing the bonds of any issue or the trust agreement securing such bonds shall provide that any officer with whom, or any bank or trust company with which such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this article and such resolutions or trust agreement may provide. (1963, c. 757, s. 11.)

§ 136-89.70. Remedies.—Any holder of bonds issued under the provisions of this article or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this article or by such trust agreement or resolution to be performed by the Authority or by any officer thereof, including the fixing, charging and collecting of tolls. (1963, c. 757, s. 12.)

§ 136-89.71. Exemption from taxation.—The exercise of the powers granted by this article will be in all respects for the benefit of the people of the State, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of turnpike projects by the Authority will constitute the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon any turnpike project or any property acquired or used by the Authority under the provisions of this article or upon the income therefrom and any bonds issued under the provisions of this article, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation within the State, except inheritance and gift taxes. (1963, c. 757, s. 13.)

§ 136-89.72. Maintenance; police and operating employees; conveyance of land by political subdivisions, agencies and commissions; annual reports and audits; conflict of interest.—Each turnpike project when constructed and opened to traffic shall be maintained and kept in good condition and repair by the Authority. Each such project shall also be policed and operated by such force of police, tolltakers and other operating employees as the Authority may in its discretion employ.

All counties, cities, towns and other political subdivisions and all public agencies and commissions of the State, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the Authority at its request upon such terms and conditions as the proper authorities of such counties, cities, towns, political subdivisions, agencies or commissions of the State may deem reasonable and fair and without the necessity for any advertisement, order of court or other action or formality, other than the regular and formal action of the authorities concerned, any real property which may be necessary or convenient to the effec-

tuation of the authorized purposes of the Authority, including public roads and other real property already devoted to public use.

On or before the thirtieth day of January in each year the Authority shall make an annual report of its activities for the preceding calendar year to the Governor. Each such report shall set forth a complete operating and financial statement covering its operation during the year. The Authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or operation of the project.

Any member, agent or employee of the Authority who contracts with the Authority or is interested, either directly or indirectly, in any contract with the Authority or in the sale of any property, either real or personal, to the Authority shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than one (1) year, or both. (1963, c. 757, s. 14.)

§ 136-89.73. Turnpike revenue refunding bonds.—The Authority is hereby authorized to provide by resolution for the issuance of turnpike revenue refunding bonds of the Authority for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the Authority, for the additional purpose of constructing improvements, extensions, or enlargements of the turnpike project or projects in connection with which the bonds to be refunded shall have been issued. The Authority is further authorized to provide by resolution for the issuance of its turnpike revenue bonds for the combined purpose of :

- (1) Refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premiums thereon and any interest accrued or to accrue to the date of redemption of such bonds; and
- (2) Paying all or any part of the cost of any additional turnpike project or projects. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority in respect of the same, shall be governed by the provisions of this article insofar as the same may be applicable. (1963, c. 757, s. 15.)

§ 136-89.74. Transfer to State.—When all bonds issued under the provisions of this article in connection with any turnpike project or projects and the interest thereon shall have been paid or a sufficient amount for the payment of all such bonds and the interest thereon to the maturity thereof shall have been set aside in trust for the benefit of the bondholders, such project or projects, if then in good condition and repair, shall become part of the State highway system and shall thereafter be maintained by the State Highway Commission free of tolls; provided, however, that the Authority may thereafter charge tolls for the use of any such project and pledge such tolls to the payment of bonds issued under the provisions of this article in connection with another turnpike project or projects, but any such pledge of tolls of a turnpike project to the payment of bonds issued in connection with another project or projects shall not be effectual until the principal of and the interest on the bonds issued in connection with the first mentioned project shall have been paid or provision made for their payment. (1963, c. 757, s. 16.)

§ 136-89.75. Article provides additional powers.—The foregoing sections of this article shall be deemed to provide an additional alternative method for the doing of the things authorized thereby, and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of turnpike revenue bonds or turnpike revenue refunding bonds under the provisions of this article

need not comply with the requirement of any other law applicable to the issuance of bonds. (1963, c. 757, s. 17.)

§ 136-89.76. Article liberally construed.—This article, being necessary for the welfare of the State and its inhabitants, shall be liberally construed to effect the purposes thereof. (1963, c. 757, s. 18.)

§ 136-89.77. Powers limited to one project.—The Authority herein created shall not construct more than one turnpike project, which project shall not exceed one hundred (100) miles in length, until the General Assembly shall have reviewed the activities of the Authority and shall have by amendment to this section, specifically authorized the construction of additional projects. (1963, c. 757, s. 18.1.)

ARTICLE 7.

Miscellaneous Provisions.

§ 136-90. Obstructing highways and roads misdemeanor.—If any person shall willfully alter, change or obstruct any highway, cartway, mill road or road leading to and from any church or other place of public worship, whether the right of way thereto be secured in the manner provided for by law or by purchase, donation or otherwise, such person shall be guilty of a misdemeanor, and fined or imprisoned, or both. If any person shall hinder or in any manner interfere with the making of any road or cartway laid off according to law, he shall be guilty of a misdemeanor, and punished by fine or imprisonment, or both, in the discretion of the court. (1872-3, c. 189, s. 6; 1883, c. 383; Code, s. 2065; Rev., s. 3784; C. S., s. 3789.)

Requisites for Indictment and Conviction.—An indictment for obstructing a neighborhood road leading to a church, which follows the words of this section will be sustained—still, to warrant a conviction, it is essential, in the absence of proof of an actual dedication, or of a laying out by public authority under § 136-71 to show a user for twenty years, and it must have been worked and kept in order by public authority. *State v. Lucas*, 124 N. C. 804, 32 S. E. 553 (1899).

A special verdict, rendered on a trial for obstructing a road, is also defective in that it does not find that the user of the road by the public was as of right and adversary. *State v. Stewart*, 91 N. C. 566 (1884).

Placing Nails in Highway.—Placing nails in the highway in order to puncture automobile tires is an obstruction within this section. *State v. Malpass*, 189 N. C. 349, 127 S. E. 248 (1925).

Preventing Construction of Drainage Ditch.—Where a person obstructs an overseer in cutting a ditch across his land to drain a public road, he is not guilty of obstructing justice, there being no provision of law for taking private property for this purpose and the payment of just compensation therefor. *State v. New*, 130 N. C. 731, 41 S. E. 1033 (1902).

Obstruction a Nuisance.—Unlawful obstruction of a highway is a public nuisance. *Brooks v. Henrietta Mills*, 182 N. C. 719, 110 S. E. 96 (1921).

Highway Unknowingly Obstructed.—When a mill company gratuitously maintained a ball ground on its premises for its employees, without direction or supervision,

it is manifest that the relation of licensor and licensee without pecuniary compensation existed between them, and it is not liable for an injury caused by obstruction of an adjoining highway by a rope intended to exclude spectators who did not pay for admission, there being no evidence that it had actual or implied knowledge thereof. *Brooks v. Henrietta Mills*, 182 N. C. 719, 110 S. E. 96 (1921).

Damages Allowed Also.—Damages are allowable for the obstruction of a highway. *Tate v. Seaboard Air Line R. Co.*, 168 N. C. 523, 84 S. E. 808 (1915).

Obstruction of Permissive Cartway.—A way over the lands of another as an outlet to and from the lands of the one claiming it, cannot be established by permissive user, but by possession adverse to the true owner; and a way of this character which has not been established by the public authorities or used and kept up by the public for a sufficient length of time does not fall within the meaning of this section so as to make its obstruction punishable. *State v. Norris*, 174 N. C. 808, 93 S. E. 950 (1917).

Private Easement.—A reservation by deed to the grantor of a restricted easement across the lands conveyed, without defining or locating it, and which has not since been located, the grantor and his family going across the lands conveyed whenever they choose, is sufficient proof of a public road so as to sustain an indictment under this section. *State v. Haynie*, 169 N. C. 277, 84 S. E. 385 (1915).

Private Roadway.—In a prosecution for unlawfully and willfully obstructing a public cartway, in the absence of evidence of

dedication to the public, or evidence of an adverse continuous user by the prosecuting witness for the period required by law to give him an easement, defendant could not be guilty where the obstruction was on the part of the road where it crossed his land. *State v. Lance*, 175 N. C. 773, 94 S. E. 721 (1917).

Maximum Penalty Constitutional.—Where a defendant is convicted of obstructing a highway and of wanton injury to personal property by the same act, it is not in violation of our Constitution nor otherwise improper to sentence him to the maximum

penalty for each offense. *State v. Malpass*, 189 N. C. 349, 127 S. E. 248 (1925).

Law Shortening Statute of Limitation.—A public-local law which shortens the period for the running of the statute of limitations to a time already expired and depriving the owner of lands of his right to stop the public user of a private right of way thereover, and declares the right of way a public one, is unconstitutional in taking the property of the owner without due process of law and in denying him the equal protection of the laws. *State v. Haynie*, 169 N. C. 277, 84 S. E. 385 (1915).

§ 136-91. Placing glass, etc., or injurious obstructions in road.—No person shall throw, place or deposit any glass or other sharp or cutting substance or any injurious obstruction in or upon any of the public highways of this State. Any person violating this section shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (1917, c. 140, ss. 18, 21; C. S., ss. 2599, 2619.)

Liability for Failure to Remove Glass, etc., Accidentally Deposited on Highway.—Assuming that a deposit of glass on the highway by defendants was purely accidental, defendants nevertheless owed other motorists the common-law duty of due care to remove the glass and debris from the highway and to give reasonable warning of the peril until it was removed. *Chandler*

v. Forsyth Royal Crown Bottling Co., 257 N. C. 245, 125 S. E. (2d) 584 (1962).

Readily removable objects carelessly left in the highway may render the person who left them there liable for negligence to the drivers of ordinary vehicles moving at a reasonable rate of speed. *Chandler v. Forsyth Royal Crown Bottling Co.*, 257 N. C. 245, 125 S. E. (2d) 584 (1962).

§ 136-92. Obstructing highway drains, misdemeanor.—Any person who shall obstruct any drains along or leading from any public road in the State shall be guilty of a misdemeanor, and punished by a fine of not less than ten nor more than one hundred dollars. (1917, c. 253; C. S., s. 3791.)

§ 136-93. Openings, structures, pipes, trees, and issuance of permits.—No opening or other interference whatsoever shall be made in any State road or highway other than streets not maintained by the State Highway Commission in cities and towns, nor shall any structure be placed thereon, nor shall any structure which has been placed thereon be changed or removed except in accordance with a written permit from the State Highway Commission or its duly authorized officers, who shall exercise complete and permanent control over such roads and highways. No State road or State highway, other than streets not maintained by the State Highway Commission in cities and towns, shall be dug up for laying or placing pipes, conduits, sewers, wires, railways, or other objects, and no tree or shrub in or on any State road or State highway shall be planted, trimmed, or removed, and no obstruction placed thereon, without a written permit as hereinbefore provided for, and then only in accordance with the regulations of said Commission or its duly authorized officers or employees; and the work shall be under the supervision and to the satisfaction of the Commission or its officers or employees, and the entire expense of replacing the highway in as good condition as before shall be paid by the persons, firms, or corporations to whom the permit is given, or by whom the work is done. The Commission, or its duly authorized officers, may, in its discretion, before granting a permit under the provisions of this section, require the applicant to file a satisfactory bond, payable to the State of North Carolina, in such an amount as may be deemed sufficient by the Commission or its duly authorized officers, conditioned upon the proper compliance with the requirements of this section by the person, firm, or corporation granted such permit. Any person making any opening in a State road or State highway, or placing any structure thereon, or changing or removing any structure thereon without obtaining a written permit as herein provided, or not in compliance with the terms of such permit, or otherwise violating the provisions of this section, shall

be guilty of a misdemeanor: Provided, this section shall not apply to railroad crossings. The railroads shall keep up said crossings as now provided by law. (1921, c. 2, s. 13; 1923, c. 160, s. 2; C. S., s. 3846(u); 1933, c. 172, s. 17; 1943, c. 410; 1957, c. 65, s. 11.)

Editor's Note.—The 1943 amendment inserted in the first and second sentences the words "not maintained by the State Highway and Public Works Commission."

The 1957 amendment substituted "State

Highway Commission" for "State Highway and Public Works Commission."

Quoted in *Taylor v. Hertford*, 253 N. C. 541, 117 S. E. (2d) 469 (1960).

§ 136-94. Gates projecting over rights of way forbidden.—It shall be unlawful for any person, firm or corporation to erect, maintain or operate upon his own land, or the land of another, any farm gate or other gate which, when opened, will project over the right of way of any State highway.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than fifty dollars or imprisoned not more than thirty days, in the discretion of the court. (1927, c. 130.)

§ 136-95. Water must be diverted from public road by ditch or drain.—When any ditch or drain is cut in such a way as to turn water into any public road, the person cutting the ditch or drain shall be compelled to cut another ditch or drain as may be necessary to take the water from said road. (Code, s. 2036; Rev., s. 2697; C. S., s. 3790.)

§ 136-96. Road or street not used within 15 years after dedication deemed abandoned; declaration of withdrawal recorded; joint tenants or tenants in common; defunct corporations.—Every strip, piece, or parcel of land which shall have been at any time dedicated to public use as a road, highway, street, avenue, or for any other purpose whatsoever, by a deed, grant, map, plat, or other means, which shall not have been actually opened and used by the public within fifteen (15) years from and after the dedication thereof, shall be thereby conclusively presumed to have been abandoned by the public for the purposes for which same shall have been dedicated; and no person shall have any right, or cause of action thereafter, to enforce any public or private easement therein, except where such dedication was made less than twenty (20) years prior to April 28, 1953, such right may be asserted within one year from and after April 28, 1953; provided, that no abandonment of any such public or private right or easement shall be presumed until the dedicator or some one or more of those claiming under him shall file and cause to be recorded in the register's office of the county where such land lies a declaration withdrawing such strip, piece or parcel of land from the public or private use to which it shall have theretofore been dedicated in the manner aforesaid; provided further, that where the fee simple title is vested in tenants in common or joint tenants of any land embraced within the boundaries of any such road, highway, street, avenue or other land dedicated for public purpose whatsoever, as described in this section, any one or more of such tenants, on his own or their behalf and on the behalf of the others of such tenants, may execute and cause to be registered in the office of the register of deeds of the county where such land is situated the declaration of withdrawal provided for in this section, and, under chapter 46 of the General Statutes of North Carolina, entitled "Partition", and chapter 1, article 29A of the General Statutes of North Carolina, known as the "Judicial Sales Act", and on petition of any one or more of such tenants such land thereafter may be partitioned by sale only as between or among such tenants, and irrespective of who may be in actual possession of such land, provided further, that in such partition proceedings any such tenants in common or joint tenants may object to such withdrawal certificate and the court shall thereupon order the same cancelled of record; that where any corporation has dedicated any strip, piece or parcel of land in the manner herein set out, and said dedicating corporation is not now in existence, it shall be conclusively presumed that the said corporation has no further right, title or interest in said strip, piece, or

parcel of land, regardless of the provisions of conveyances from said corporation, or those holding under said corporation, retaining title and interest in said strip, piece, or parcel of land so dedicated; the right, title and interest in said strip, piece, or parcel of land shall be conclusively presumed to be vested in those persons, firms or corporations owning lots or parcels of land adjacent thereto, subject to the provisions set out hereinbefore in this section.

The provisions of this section shall have no application in any case where the continued use of any strip of land dedicated for street or highway purposes shall be necessary to afford convenient ingress or egress to any lot or parcel of land sold and conveyed by the dedicator of such street or highway. This section shall apply to dedications made after as well as before April 28, 1953. (1921, c. 174; C. S., ss. 3846(rr), 3846(ss), 3846(tt); 1939, c. 406; 1953, c. 1091; 1957, c. 517.)

Editors Note.—The 1953 amendment rewrote this section.

The 1957 amendment substituted "chapter 46" for "chapter 146" near the middle of the section.

This Section Is Constitutional.—The right of those purchasing lots in a subdivision with reference to a plat to assert easements in the streets shown by the plat is dependent upon the doctrine of equitable estoppel, and providing for the termination of their easements by revocation of the dedication when they have failed to assert same within two years from the effective date of the statute, affords them a reasonable time in which to assert their rights, and therefore does not deprive them thereof without due process of law. *Sheets v. Walsh*, 217 N. C. 32, 6 S. E. (2d) 817 (1940).

Section Not Applicable Where Road Is Way of Necessity.—Where the jury found that continued use of the street was necessary to afford convenient ingress, egress and regress to the lot owned by plaintiffs the provisions of this section that a street not used within 20 years after dedication shall be deemed abandoned where not applicable. *Evans v. Horne*, 226 N. C. 581, 39 S. E. (2d) 612 (1946), following *Home Real Estate Loan, etc., Co. v. Carolina Beach*, 216 N. C. 778, 7 S. E. (2d) 13 (1940), and distinguishing *Sheets v. Walsh*, 217 N. C. 32, 6 S. E. (2d) 817 (1940); *Steadman v. Pinetops*, 251 N. C. 509, 112 S. E. (2d) 102 (1960).

Where land was dedicated for street and highway purposes and such street or highway is necessary to afford convenient ingress and egress to any parcel of land sold and conveyed by the dedicator of such street or highway prior to March 8, 1921, the dedication may not be withdrawn under the provisions of this section. *Russell v. Coggin*, 232 N. C. 674, 62 S. E. (2d) 70 (1950).

Owners Are Only Parties Entitled to Withdraw Streets from Dedication.—Where individual owners of lands subdivide and sell same by block and lot number with reference to a plat showing streets therein, they retain the fee in the streets subject to the easement thus dedicated to the public in general and to the private owners of adjacent lots in particular, and are the only parties entitled to withdraw

the streets from dedication when the streets have not been used for twenty years subsequent to such dedication and are not necessary for ingress and egress to any of the lots sold. *Russell v. Coggin*, 232 N. C. 674, 62 S. E. (2d) 70 (1950).

The only instance in which the adjacent owners of lots in a subdivision may be deemed to own any right, title or interest in a dedicated street, except an easement therein, is where the street was dedicated by a corporation which has become non-existent. *Russell v. Coggin*, 232 N. C. 674, 62 S. E. (2d) 70 (1950).

Where lots are sold and conveyed by reference to a map or plat which represents a division of a tract of land into subdivisions of streets and lots, such streets become dedicated to the public use, and the purchaser of a lot or lots acquires the right to have all and each of the streets kept open; and it makes no difference whether the streets be in fact opened or accepted by the governing boards of towns or cities if they lie within municipal corporations. There is a dedication, and if they are not actually opened at the time of the sale they must be at all times free to be opened as occasion may require. *Steadman v. Pinetops*, 251 N. C. 509, 112 S. E. (2d) 102 (1960); *Janicki v. Lorek*, 255 N. C. 53, 120 S. E. (2d) 413 (1961).

And it makes no difference whether the streets be in fact opened or accepted by the public. *Janicki v. Lorek*, 255 N. C. 53, 120 S. E. (2d) 413 (1961).

Effect of Withdrawal before Acceptance.—The prospective dedication of streets, parks, etc., in the sale of a development of lands is not binding upon a city until acceptance, and neither the city nor the general public can acquire any rights thereunder against the owner of the land or purchasers from him where the offer of dedication has been withdrawn before acceptance, under the provisions of this section. *Irwin v. Charlotte*, 193 N. C. 109, 136 S. E. 368 (1927); *Steadman v. Pinetops*, 251 N. C. 509, 112 S. E. (2d) 102 (1960).

Withdrawal in Conformity with Section Terminates Easement.—Where land impliedly dedicated has not been actually opened or used for twenty years, and no person has asserted public or private easement thereon within the period fixed by

this section or at any other time, and the land is not necessary for ingress, egress or regress to lots sold, effect is given by this section to the filing of a declaration of withdrawal of the land from dedication on the part of those holding under the original owner, and the dedication of the land is conclusively presumed to have been abandoned, and no claim of easement public or private may thereafter be enforced. *Foster v. Atwater*, 226 N. C. 472, 38 S. E. (2d) 316 (1946).

The streets in question were dedicated to the public more than twenty years prior to the institution of this action by the sale of lots in a subdivision with reference to a plat showing the streets. The streets were never actually opened or used at any time, and no person asserted any public or private easement therein within two years from the passage of this article, or at any other time. The streets in question are not necessary to afford convenient ingress or egress to any other lots in the subdivision. The corporation making the dedication no longer exists. Plaintiffs, claimants under dedicatory, filed and recorded a declaration withdrawing said streets from the dedication. It was held that the revocation of the dedication terminated the easement of the public and of the purchasers of lots in the subdivision, and therefore plaintiffs own the fee in the said land and can convey same free of the easements. *Sheets v. Walsh*, 217 N. C. 32, 6 S. E. (2d) 817 (1940).

Where revocation of a dedication is made in the manner provided in this section, streets and alleys theretofore dedicated become private property and are not subject to any easement by reason of the dedication except in so far as their use may be necessary to afford convenient ingress to and egress from any lot previously sold and conveyed by the dedicatory. *Hine v. Blumenthal*, 239 N. C. 537, 80 S. E. (2d) 458 (1954).

Use by Public Prevents Withdrawal.—The dedication of a street may not be withdrawn, if the dedication has been accepted and the street or any part of it is actually opened and used by the public. *Russell v. Coggin*, 232 N. C. 674, 62 S. E. (2d) 70 (1950); *Janicki v. Lorek*, 255 N. C. 53, 120 S. E. (2d) 413 (1961).

Where a street in a subdivision is dedicated to the purchasers of lots and to the public by the sale of lots with reference to a plat of the subdivision showing the street, and the street is actually opened and used by the public even for a part of the width shown by the plat, such use precludes the owner from revoking the dedication under this section, even as to the portion of the width of the street not used and maintained by the municipality. *Home Real Estate Loan, etc., Co. v. Carolina Beach*, 216 N. C.

778, 7 S. E. (2d) 13 (1940).

Declaration of Withdrawal Must Be Filed.—When certain streets and alleys have been dedicated to the public by the registration of a plat, it is necessary to a withdrawal of the dedication under this section, among other requirements, that the declaration of such withdrawal should be recorded; and when the facts agreed in an action involving the validity of an alleged withdrawal fail to disclose whether the declaration of the withdrawal had been recorded and to show plaintiffs to be claimants of title under dedicators who filed the plats, they are insufficient to enable the court to determine the question. *Sheets v. Walsh*, 215 N. C. 711, 2 S. E. (2d) 861 (1939).

Withdrawal of Street Dedicated and Accepted by Municipality.—Where a municipality opens, improves and maintains a street dedicated to the public by the registration of a map or plat showing such street, there is an acceptance of the dedication of the street by the municipality, and where the dedication of a street has become complete by the acceptance thereof by a municipality, and the street is opened and maintained by the municipality and used by the public, the right to revoke the dedication is gone, except with the consent of the municipality acting in behalf of the public and the consent of those persons, firms or corporations having vested rights in the dedication. *Steadman v. Pinetops*, 251 N. C. 509, 112 S. E. (2d) 102 (1960).

Withdrawal of Streets Dedicated by Corporation Which Ceases to Exist.—Where a corporation, which had dedicated streets to the public by the registration of a map showing such streets, ceases to exist, the right to revoke such dedication is vested in the owner of the land abutting the streets, and such right is not affected by the fact that a receivership of the corporation is still extant. *Steadman v. Pinetops*, 251 N. C. 509, 112 S. E. (2d) 102 (1960).

Burden of Proof and Admissibility of Evidence.—In an action for damages for trespass and to enjoin further trespass upon an easement claimed by plaintiffs by dedication, the burden is on plaintiffs to establish the property right asserted, and defendants are entitled to introduce the record of withdrawal of dedication executed pursuant to this section as a release or extinguishment by estoppel of record from sources to which plaintiffs were a privy, notwithstanding the absence of allegation in their answer of such withdrawal from dedication. *Pritchard v. Fields*, 228 N. C. 441, 45 S. E. (2d) 575 (1947).

Cited in *Lee v. Walker*, 234 N. C. 687, 68 S. E. (2d) 664 (1951); *Todd v. White*, 246 N. C. 59, 97 S. E. (2d) 439 (1957); *Salisbury v. Barnhardt*, 249 N. C. 549, 107 S. E. (2d) 297 (1959).

§ 136-97. Responsibility of counties for upkeep, etc., terminated; liability of Commission for damage on State highway system.—The board of county

commissioners or other road-governing bodies of the various counties in the State are hereby relieved of all responsibility or liability for the upkeep or maintenance of any of the roads or bridges thereon constituting the State highway system, after the same shall have been taken over, and the control thereof assumed by the State Highway Commission. The State Highway Commission as a Commission and the individual members thereof, shall not be liable for any damage sustained by any person, firm, or corporation on the State highway system, except for wanton and corrupt negligence. (1921, c. 2, s. 50; C. S., s. 3846(dd); 1933, c. 172, s. 17; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

Failure to Remove Obstruction after Notice.—In an action to recover for injuries sustained when the car in which plaintiffs were riding struck a limb lying on a dirt highway, it was shown that defendant was a divisional engineer of the Commission, that the highway in question was embraced within his division, that defendant was given notice that the limb was lying across the highway and that the acci-

dent occurred some six hours after such notice. It was held that defendant's motion to nonsuit was properly allowed, since, if defendant's failure to remove the limb was a breach of an official or governmental duty involving the exercise of discretion, there was neither allegation nor evidence of corruption or malice, and if such duty was a ministerial duty it was of a public nature imposed entirely for the public benefit, and there was neither allegation nor proof that this section provided for personal liability. *Wilkins v. Burton*, 220 N. C. 13, 16 S. E. (2d) 406 (1941).

§ 136-98. Prohibition of local road taxes and bonds and construction of roads by local authorities; existing contracts.—From and after the first day of July, one thousand nine hundred and thirty-one, no county or road district by authority of any public, public-local, or private act shall levy any taxes for the maintenance, improvement, reconstruction, or construction of any of the public roads in the various and several counties of the State, nor shall any county, through the board of commissioners thereof or the highway commission, nor shall any district or township highway commission, issue or sell or enter into any contract to issue or sell any bonds heretofore authorized to be issued and sold, but unissued and unsold, for the purpose of obtaining money with which to improve, maintain, reconstruct, or construct roads, except for the purpose of discharging obligations entered into prior to the ratification of this section, and all acts authorizing the board of county commissioners, the county highway commissions, district highway or township commissions, to issue and sell bonds for the purpose aforesaid, are hereby amended so as to conform to this section. No board of county commissioners nor county highway commission, nor district nor township highway commission from and after the passage of this section shall enter into any contract to build or construct roads in the various and several counties except for such projects as can be completed and paid for prior to July first, one thousand nine hundred and thirty-one. All contracts heretofore entered into by any county through the board of county commissioners, county highway commission, and all contracts heretofore entered into by any district or township highway commission which shall be incomplete on July first, one thousand nine hundred and thirty-one, shall be taken over by the State Highway Commission and completed by the Commission by the use of money and funds applicable thereto, by the terms of the said contracts. Nothing in this section or in any section of chapter 145 of the Public Laws of 1931 that may appear in this Code shall be construed to prohibit the levying of taxes authorized by law for the payment of interest or principal on outstanding bonds or other evidences of debt lawfully issued. Any county or road district which has heretofore issued bonds or other evidences of debt by authority of law for road improvement purposes may refund said bonds or other evidences of debt under and pursuant to the laws of the State of North Carolina relative thereto. (1931, c. 145, s. 35; 1957, c. 65, s. 11.)

Editor's Note.—The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

§ 136-99. Sale of camp sites and other real estate and application of proceeds.—Any county, road and/or highway district which owns a camp site or other real estate built or purchased with road or highway funds, may sell and convey such camp site or real estate, and the money so received therefrom shall be used to retire any bonds issued for road or highway purposes, or interest due thereon. If there are no outstanding bonds, the money received shall be turned over to the general county fund. (1931, c. 232, s. 2.)

§ 136-100. Application of insurance funds collected on burned buildings.—In event any building or buildings erected or constructed with road or highway funds shall be damaged or destroyed by fire and the same were insured, the insurance when collected shall be used to retire any outstanding bonds issued for road purposes and interest thereon, and if there are no outstanding bonds the money shall be turned over to the general county fund: Provided, that said fund received from insurance may be used to rebuild, repair and equip any jail or other building used to house prisoners. (1931, c. 232, s. 4.)

§ 136-101. Use of funds to retire current liabilities and deficits.—In lieu of paying the moneys received as herein set out on bonds and interest, if there are any current liabilities or current deficits, the money may be used for discharging such current liabilities and deficits. (1931, c. 232, s. 5.)

§ 136-102. Billboard obstructing view at entrance to school, church or public institution on public highway.—(a) It shall be unlawful for any person, firm, or corporation to construct or maintain outside the limits of any city or town in this State any billboard larger than six square feet at or nearer than two hundred feet to the point where any walk or drive from any school, church, or public institution located along any highway enters such highway except under the following conditions:

- (1) Such billboard is attached to the side of a building or buildings which are or may be erected within two hundred feet of any such walk or drive and the attachment thereto causes no additional obstruction of view.
- (2) A building or other structure is located so as to obstruct the view between such walk or drive and such billboard.
- (3) Such billboard is located on the opposite side of the highway from the entrance to said walk or drive.

(b) Any person, firm, or corporation convicted of violating the provisions of this section shall be guilty of a misdemeanor and punished by a fine of ten dollars (\$10.00), and each day that such violation continues shall be considered a separate offense. (1947, c. 304, ss. 1, 2.)

§ 136-102.1. Blue Star Memorial Highway.—All of the United States Highway #70, wherever located in North Carolina, shall, from enactment and ratification of this section, be known and designated as "Blue Star Memorial Highway."

No State highway funds may be expended for the erection of signs designating the highway as provided in this section. (1963, c. 140.)

ARTICLE 8.

Citation to Highway Bond Acts.

I. State of North Carolina Highway Serial Bonds. Public Laws 1921, c. 2, s. 39; Public Laws Ex. Sess. 1921, c. 74; Public Laws 1923, c. 263, s. 3; Public Laws 1925, c. 45, s. 4; Public Laws 1925, c. 133.

II. State of North Carolina Highway Serial Bonds. Public Laws 1925, c. 35.

III. Chowan Bridge Bonds. Public Laws 1925, c. 74; Public Laws 1927, cc. 176 and 183; Public Laws 1929, cc. 128 and 144; Public Laws 1935, c. 15, s. 1.

IV. The Highway Bond Act of 1927. Public Laws 1927, c. 95; 1929, c. 312.

V. Cape Fear River Bridge Bonds. Public Laws 1927, c. 41; Public Laws 1929, cc. 127, 144; Public Laws 1931, c. 90; 1935, c. 17.

VI. For acts which authorized the issuance of county, township, and district road bonds, and bonds for State-line bridges, having no prospective operation after 1931 in view of Public Laws 1931, c. 145, s. 35, see chapter 70 of the Consolidated Statutes, as amended.

VII. The Highway Bond Act of 1943. Session Laws 1943, c. 322.

VIII. The Secondary Road Bond Act of 1949. Session Laws 1949, cc. 1250, 1255.

Cross Reference.—For a list of bond acts generally, see chapter 142, art. 6.

ARTICLE 9.

Condemnation.

§ 136-103. **Institution of action and deposit.**—In case condemnation shall become necessary the State Highway Commission shall institute a civil action by filing in the superior court of any county in which the land is located a complaint and a declaration of taking declaring that such land, easement, or interest therein is thereby taken for the use of the Highway Commission. Said declaration shall contain or have attached thereto the following:

- (1) A statement of the authority under which and the public use for which said land is taken.
- (2) A description of the entire tract or tracts affected by said taking sufficient for the identification thereof.
- (3) A statement of the estate or interest in said land taken for public use and a description of the area taken sufficient for the identification thereof.
- (4) The names and addresses of those persons who the Highway Commission is informed and believes may have or claim to have an interest in said lands, so far as the same can by reasonable diligence be ascertained and if any such persons are infants, non compos mentis, under any other disability, or their whereabouts or names unknown, it must be so stated.
- (5) A statement of the sum of money estimated by said Commission to be just compensation for said taking.

Said complaint shall contain or have attached thereto the following:

- (1) A statement of the authority under which and the public use for which said land is taken.
- (2) A description of the entire tract or tracts affected by said taking sufficient for the identification thereof.
- (3) A statement of the estate or interest in said land taken for public use and a description of the area taken sufficient for the identification thereof.
- (4) The names and addresses of those persons who the Highway Commission is informed and believes may have or claim to have an interest in said lands, so far as the same can by reasonable diligence be ascertained and if any such persons are infants, non compos mentis, under any other disability, or their whereabouts or names unknown, it must be so stated.
- (5) A statement as to such liens or other encumbrances as the Commission is informed and believes are encumbrances upon said real estate and can by reasonable diligence be ascertained.
- (6) A prayer that there be a determination of just compensation in accordance with the provisions of this article.

The filing of said complaint and said declaration of taking shall be accompanied by the deposit of the sum of money estimated by said Highway Commission to be just compensation for said taking and upon the filing of said complaint and said declaration of taking and deposit of said sum, summons shall be issued and together with a copy of said complaint and said declaration of taking and notice of the

deposit be served upon the person named therein in the manner now provided for the service of process in civil actions. The Commission may amend the complaint and declaration of taking and may increase the amount of its deposit with the court at any time while the proceeding is pending, and the owner shall have the same rights of withdrawal of this additional amount as set forth in § 136-105 of this chapter. (1959, c. 1025, s. 2; 1961, c. 1084, s. 1; 1963, c. 1156, s. 1.)

Cross Reference.—For decisions relating to condemnation procedure prior to 1959, see notes to §§ 40-11, 40-12 and 136-19.

Editor's Note.—Section 3 of the act inserting this article provides: "All laws and clauses of laws in conflict with this act are hereby repealed except that as to those actions or proceedings pending upon the effective date of this act or to any takings or causes of actions arising prior to the effective date of this article the present provisions of the law shall remain in full force and effect until such actions or proceedings are concluded."

The 1961 amendment inserted "complaint and" before "declaration" in the last sentence.

The 1963 amendment inserted "may"

before "increase" in the last sentence.

For cases decided under provisions formerly applicable to condemnation by the State Highway Commission, see notes to §§ 40-11, 40-12 and 136-19.

The effective date of this article is July 1, 1960.

Section Inapplicable to Takings or Causes of Action Arising before July 1, 1960.—This section does not apply "to any takings or causes of actions arising prior to the effective date" thereof, to wit, July 1, 1960. *Barnes v. North Carolina State Highway Comm.*, 257 N. C. 507, 126 S. E. (2d) 732 (1962).

Cited in *State Highway Comm. v. Kenan Oil Co.*, 260 N. C. 131, 131 S. E. (2d) 665 (1963).

§ 136-104. Vesting of title and right of possession; recording memorandum or supplemental memorandum of action.—Upon the filing of the complaint and the declaration of taking and deposit in court, to the use of the person entitled thereto, of the amount of the estimated compensation stated in the declaration, title to said land or such other interest therein specified in the complaint and the declaration of taking, together with the right to immediate possession hereof shall vest in the State Highway Commission and the judge shall enter such orders in the cause as may be required to place the Highway Commission in possession, and said land shall be deemed to be condemned and taken for the use of the Highway Commission and the right to just compensation therefor shall vest in the person owning said property or any compensable interest therein at the time of the filing of the complaint and the declaration of taking and deposit of the money in court, and compensation shall be determined and awarded in said action and established by judgment therein.

On and after July 1, 1961, the Highway Commission, at the time of the filing of the complaint and declaration of taking and deposit of estimated compensation, shall record a memorandum of action with the register of deeds in all counties in which the land involved therein is located and said memorandum shall be recorded among the land records of said county. Upon the amending of any complaint and declaration of taking affecting the property taken, the State Highway Commission shall record a supplemental memorandum of action. The memorandum of action shall contain

- (1) The names of those persons who the Highway Commission is informed and believes may have or claim to have an interest in said lands and who are parties to said action;
- (2) A description of the entire tract or tracts affected by said taking sufficient for the identification thereof;
- (3) A statement of the estate or interest in said land taken for public use;
- (4) The date of institution of said action, the county in which said action is pending, and such other reference thereto as may be necessary for the identification of said action.

As to those actions instituted by the Highway Commission under the provisions of this article prior to July 1, 1961, the Highway Commission shall, on or before October 1, 1961, record a memorandum of action with the register of deeds in all counties in which said land is located as hereinabove set forth; however, the failure

of the Highway Commission to record said memorandum shall not invalidate those actions instituted prior to July 1, 1961. (1959, c. 1025, s. 2; 1961, c. 1084, s. 2; 1963, c. 1156, s. 2.)

Editor's Note.—The 1961 amendment added all of the section beginning with the second paragraph.

The 1963 amendment inserted the present second sentence of the second paragraph.

§ 136-105. Disbursement of deposit; serving copy of disbursing order on Director of Highway Commission.—Any time prior to the expiration of two years from service of summons, the person named in the complaint and declaration of taking may apply to the court for disbursement of the money deposited in the court, or any part thereof, as full compensation, or as a credit against just compensation without prejudice to further proceedings in the cause to determine just compensation. Upon such application, the judge shall, unless there is a dispute as to title, order that the money deposited be paid forthwith to the person entitled thereto in accordance with the application. The judge shall have power to make such orders with respect to encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as shall be just and equitable.

No notice to the Highway Commission of the hearing upon the application for disbursement of deposit shall be necessary, but a copy of the order disbursing the deposit shall be served upon the Director of the Highway Commission. (1959, c. 1025, s. 2; 1961, c. 1084, s. 3.)

Editor's Note.—The 1961 amendment added the second paragraph.

Oil Co., 260 N. C. 131, 131 S. E. (2d) 665 (1963).

Cited in State Highway Comm. v. Kenan

§ 136-106. Answer, reply and plat.—(a) Any person whose property has been taken by the Highway Commission by the filing of a complaint and a declaration of taking, may within the time hereinafter set forth file an answer to the complaint only praying for a determination of just compensation. No answer shall be filed to the declaration of taking and notice of deposit. Said answer shall, in addition, contain the following:

- (1) Such admissions or denials of the allegations of the complaint as are appropriate.
- (2) The names and addresses of the persons filing said answer, together with a statement as to their interest in the property taken.
- (3) Such affirmative defenses or matters as are pertinent to the action.

(b) A copy of the answer shall be served on the Director of Highways, State Highway Commission, in Raleigh, provided that failure to serve the answer shall not deprive the answer of its validity. The affirmative allegations of said answer shall be deemed denied. The Highway Commission may, however, file a reply within thirty (30) days from receipt of a copy of the answer.

(c) The Highway Commission, within ninety (90) days from the receipt of the answer shall file in the cause a plat of the land taken and such additional area as may be necessary to properly determine the damages, and a copy thereof shall be mailed to the parties or their attorney; provided, however, the Commission shall not be required to file a map or plat in less than six (6) months from the date of the filing of the complaint. (1959, c. 1025, s. 2; 1961, c. 1084, s. 4; 1963, c. 1156, ss. 3, 4.)

Editor's Note.—The 1961 amendment substituted "receipt" for "filing" near the beginning of subsection (c) and added "or their attorney" at the end thereof.

The 1963 amendment inserted "only" before "praying" near the end of the first

sentence of subsection (a), inserted the present second sentence in subsection (a), substituted "ninety (90)" for "sixty (60)" near the beginning of subsection (c) and added the proviso at the end thereof.

§ 136-107. Time for filing answer.—Any person named in and served with a complaint and declaration of taking shall have twelve (12) months from the date

of service thereof to file answer. Failure to answer within said time shall constitute an admission that the amount deposited is just compensation and shall be a waiver of any further proceeding to determine just compensation; in such event the judge shall enter final judgment in the amount deposited and order disbursement of the money deposited to the owner. For good cause shown and upon notice to the Highway Commission the judge may within the initial twelve months' period extend the time for filing answer for a period not to exceed an additional six (6) months. (1959, c. 1025, s. 2.)

§ 136-108. Determination of issues other than damages.—After the filing of the plat, the judge, upon motion and ten (10) days' notice by either the Highway Commission or the owner, shall, either in or out of term, hear and determine any and all issues raised by the pleadings other than the issue of damages, including, but not limited to, if controverted, questions of necessary and proper parties, title to the land, interest taken, and area taken. (1959, c. 1025, s. 2; 1963, c. 1156, s. 5.)

Editor's Note.—The 1963 amendment substituted "and all issues" for "issue" preceding "raised" and also inserted "but not limited to" following "including." **Quoted in** *Johnson v. North Carolina State Highway Comm.*, 259 N. C. 371, 130 S. E. (2d) 544 (1963).

§ 136-109. Appointment of commissioners.—(a) Upon request of the owner in the answer, or upon motion filed by either the Highway Commission or the owner within sixty (60) days after the filing of answer, the clerk shall appoint, after the determination of other issues as provided by § 136-108 of this chapter, three competent, disinterested freeholders residing in the county to go upon the property and under oath appraise the damage to the land sustained by reason of the taking and report same to the court within a time certain. If no request or motion is made for the appointment of commissioners within the time permitted, the cause shall be transferred to the civil issue docket for trial at term as to the issue of just compensation.

(b) Such commissioners, if appointed, shall have the power to make such inspection of the property, hold such hearings, swear such witnesses, and take such evidence as they may, in their discretion, deem necessary, and shall file into court a report of their determination of the damages sustained.

(c) Said report of commissioners shall in substance be in written form as follows:

TO THE SUPERIOR COURT OFCOUNTY
We,, and, Commis-
sioners appointed by the Court to assess the damages that have been and will
be sustained by, the owner of certain land lying in
..... County, North Carolina, which has been taken by the State
Highway Commission for highway purposes, do hereby certify that we convened,
and, having first been duly sworn, visited the premises, and took such evidence
as was presented to us, and after taking into full consideration the quality and
quantity of the land and all other facts which reasonably affect its fair market
value at the time of the taking, we have determined the fair market value of the
part of the land taken to be the sum of \$..... and the damage to the
remainder of the land of the owner by reason of the taking to be the sum of
\$..... (if applicable).

We have determined the general and special benefits resulting to said owner
from the construction of the highway to be the sum of \$..... (if ap-
plicable).

GIVEN under our hands, this the day of, 19.....
..... (SEAL)
..... (SEAL)
..... (SEAL)

(d) A copy of the report shall at the time of filing be mailed to each of the parties. Within thirty (30) days after the filing of the report, either the Com-

mission or the owner, may except thereto and demand a trial de novo by a jury as to the issue of damages. Whereupon the action shall be placed on the civil issue docket of the superior court for trial de novo by a jury at term as to the issue of damages, provided, that upon agreement of both parties trial by jury may be waived and the issue determined by the judge. The report of commissioners shall not be competent as evidence upon the trial of the issue of damages in the superior court, nor shall evidence of the deposit by the Commission into the court be competent upon the trial of the issue of damages. If no exception to the report of commissioners is filed within the time prescribed final judgment shall be entered by the judge upon a determination and finding by him that the report of commissioners, plus interest computed in accordance with § 136-113 of this chapter, awards to the property owners just compensation. In the event that the judge is of the opinion and, in his discretion, determines that such award does not provide just compensation he shall set aside said award and order the case placed on the civil issue docket for determination of the issue of damages by a jury. (1959, c. 1025, s. 2; 1961, c. 1084, s. 5; 1963, c. 1156, s. 6.)

Editor's Note.—The 1961 amendment substituted in subsection (d) “§ 136-113” for “§ 136-114.”

The 1963 amendment inserted “upon” and “filed” before and after, respectively, the word “motion” near the beginning of

subsection (a), moved the clause as to the determination of issues under § 136-108, which formerly followed “answer” in the first sentence of subsection (a), and made other minor changes therein.

§ 136-110. Parties; orders; continuances.—The judge may appoint some competent attorney to appear for and protect the rights of any party or parties in interest who are unknown, or whose residence is unknown and who has not appeared in the proceeding by an attorney or agent. The judge shall appoint guardians ad litem for such parties as are minors, incompetents, or other parties who may be under a disability and without general guardian, and the judge shall have the authority to make such additional parties as are necessary to the complete determination of the proceeding and enter such other orders either in law or equity as may be necessary to carry out the provisions of this article.

Upon the coming on of the cause for hearing pursuant to G. S. 136-108 or upon the coming on of the cause for trial, the judge, in order that the material ends of justice may be served, upon his own motion, or upon motion of any of the parties thereto and upon proper showing that the effect of condemnation upon the subject property cannot presently be determined, may, in his discretion, continue the cause until the highway project under which the appropriation occurred is open to traffic, or until such earlier time as, in the opinion of the judge, the effect of condemnation upon said property may be determined. (1959, c. 1025, s. 2; 1963, c. 1156, s. 7.)

Editor's Note.—The 1963 amendment added the second paragraph.

§ 136-111. Remedy where no declaration of taking filed; recording memorandum of action.—Any person whose land or compensable interest therein has been taken by the Highway Commission and no complaint and declaration of taking has been filed by said Highway Commission may, within twelve (12) months of the completion of highway project for which the land was taken, file a complaint in the superior court setting forth the names and places of residence of the parties, so far as the same can by reasonable diligence be ascertained, who own or have, or claim to own or have, estates or interests in the said real estate and if any such persons are under a legal disability, it must be so stated, together with a statement as to any encumbrances on said real estate; said complaint shall further allege with particularity the facts which constitute said taking together with the dates that they allegedly occurred; said complaint shall describe the property allegedly owned by said parties and shall describe the area and interests allegedly taken. Upon the filing of said complaint, summons shall issue and together with a copy of said complaint be served on the Director of Highways. The allegations of said com-

plaint shall be deemed denied; however, the Highway Commission within sixty (60) days of service of summons and complaint may file answer thereto, and if said taking is admitted by the Highway Commission, it shall, at the time of filing answer, deposit with the court the estimated amount of compensation for said taking and notice of said deposit shall be given to said owner. Said owner may apply for disbursement of said deposit and disbursement shall be made in accordance with the applicable provisions of § 136-105 of this chapter. If a taking is admitted, the Commission shall, within ninety (90) days of the filing of the answer to the complaint, file a map or plat of the land taken. The procedure hereinbefore set out shall be followed for the purpose of determining all matters raised by the pleadings and the determination of just compensation.

The plaintiff at the time of filing of the complaint shall record a memorandum of action with the register of deeds in all counties in which the land involved therein is located, said memorandum to be recorded among the land records of said county. The memorandum of action shall contain

- (1) The names of those persons who the plaintiff is informed and believes may have or claim to have an interest in said lands and who are parties to said action;
- (2) A description of the entire tract or tracts affected by the alleged taking sufficient for the identification thereof;
- (3) A statement of the estate or interest in said land allegedly taken for public use; and
- (4) The date on which plaintiff alleges the taking occurred, the date on which said action was instituted, the county in which it was instituted, and such other reference thereto as may be necessary for the identification of said action. (1959, c. 1025, s. 2; 1961, c. 1084, s. 6; 1963, c. 1156, s. 8.)

Editor's Note.—The 1961 amendment substituted "complaint" for "petition" near the end of the first sentence of the first paragraph and added the second paragraph with subdivisions (1) through (4).

The 1963 amendment increased the period for filing an answer in the third sentence of the first paragraph from 30 to 60 days and inserted the present fifth sentence therein.

§ 136-112. Measure of damages.—The following shall be the measure of damages to be followed by the commissioners, jury or judge who determines the issue of damages:

- (1) Where only a part of a tract is taken, the measure of damages for said taking shall be the difference between the fair market value of the entire tract immediately prior to said taking and the fair market value of the remainder immediately after said taking, with consideration being given to any special or general benefits resulting from the utilization of the part taken for highway purposes.
- (2) Where the entire tract is taken the measure of damages for said taking shall be the fair market value of the property at the time of taking. (1959, c. 1025, s. 2.)

Editor's Note.—For highway cases discussing offsets against damages prior to the enactment of this section, see note under § 136-19.

Distinction between General and Special Benefits.—The most satisfactory distinction between general and special benefits is that general benefits are those which arise from the fulfillment of the public object which justified the taking, and special benefits are those which arise from the peculiar relation of the land in question to the public improvement. *Templeton v. State Highway Comm.*, 254 N. C. 337, 118 S. E. (2d) 918 (1961).

Items going to make up the "difference" in subdivision (1) of this section embrace compensation for the part taken and compensation for injury to the remaining portion, which is to be offset under the terms of this section by any general and special benefits resulting to the landowner from the utilization of the property taken for a highway. *Templeton v. State Highway Comm.*, 254 N. C. 337, 118 S. E. (2d) 918 (1961).

Determination of Value.—In estimating the value of property all of the capabilities of the property, and all of the uses to which it may be applied, or for which it

is adapted, which affect its value in the market are to be considered, and not merely the condition it is in at the time and the use to which it is then applied by the owner. *Williams v. State Highway Comm.*, 252 N. C. 514, 114 S. E. (2d) 340 (1960).

Admissible Evidence.—Any evidence which aids the jury in fixing a fair market value of the land and its diminution by the burden put upon it, is relevant and should be heard. *Templeton v. State Highway Comm.*, 254 N. C. 337, 118 S. E. (2d) 918 (1961), citing *Gallimore v. State Highway & Public Works Comm.*, 241 N. C. 350, 85 S. E. (2d) 392 (1955).

The jury should be allowed to hear testimony that construction of a highway greatly increased the property values of all the property along the highway, and

the opinion of a witness that petitioners' land had tripled in value in determining what general and special benefits, if any, the petitioners received. *Templeton v. State Highway Comm.*, 254 N. C. 337, 118 S. E. (2d) 918 (1961).

Questioning of Expert Witness.—An expert witness may be questioned on cross-examination with respect to the sales prices of nearby property to test his knowledge of values and for the purpose of impeachment, but not for the purpose of fixing value. This is especially true if the witness used such sales as a basis for his appraisal of the property taken, or if he had actually appraised the property sold. *Templeton v. State Highway Comm.*, 254 N. C. 337, 118 S. E. (2d) 918 (1961).

§ 136-113. Interest as a part of just compensation.—To said amount awarded as damages by the commissioners or a jury or judge, the judge shall, as a part of just compensation, add interest at the rate of six per cent (6%) per annum on said amount from the date of taking to the date of judgment; but interest shall not be allowed from the date of deposit on so much thereof as shall have been paid into court as provided in this article. (1959, c. 1025, s. 2.)

§ 136-114. Additional rules.—In all cases of procedure under this article where the mode or manner of conducting the action is not expressly provided for in this article or by the statute governing civil procedure or where said civil procedure statutes are inapplicable the judge before whom such proceeding may be pending shall have the power to make all the necessary orders and rules of procedure necessary to carry into effect the object and intent of this chapter and the practice in such cases shall conform as near as may be to the practice in other civil actions in said courts. (1959, c. 1025, s. 2.)

§ 136-115. Definitions.—For the purpose of this article

- (1) The word "judge" shall mean the resident judge of the superior court in the district where the cause is pending, or special judge residing in said district, or the judge of the superior court assigned to hold the courts of said district or the emergency or special judge holding court in the county where the cause is pending.
- (2) The words "person", "owner", and "party" shall include the plural; and the words "Highway Commission" shall mean the State Highway Commission. (1959, c. 1025, s. 2; 1961, c. 1084, s. 7.)

Editor's Note.—The 1961 amendment inserted the words "or special" in the next to last line of subdivision (1).

§ 136-116. Final judgments.—Final judgments entered in actions instituted under the provisions of this article shall contain a description of the property affected, together with a description of the property and estate or interest acquired by the Commission and a copy of said judgment shall be certified to the register of deeds in the county in which the land or any part thereof lies and be recorded among the land records of said county. (1959, c. 1025, s. 2.)

§ 136-117. Payment of compensation.—If there are adverse and conflicting claimants to the deposit made into the court by the Highway Commission or the additional amount determined as just compensation, on which final judgment is entered in said action, the judge may direct the full amount determined to be paid into said court by the Highway Commission and may retain said cause for determination of who is entitled to said moneys and may by further order in the cause direct

to whom the same shall be paid and may in its discretion order a reference to ascertain the facts on which such determination and order are to be made. (1959, c. 1025, s. 2.)

§ 136-118. Agreements for entry.—The provisions of this article shall not prevent the Highway Commission and the owner from entering into a written agreement whereby the owner agrees and consents that the Highway Commission may enter upon his property without filing the complaint and declaration of taking and depositing estimated compensation as herein provided and the Highway Commission shall have the same rights under such agreement with the owner in carrying on work on such project as it would have by having filed a complaint and a declaration of taking and having deposited estimated compensation as provided in this article. (1959, c. 1025, s. 2; 1961, c. 1084, s. 8.)

Editor's Note.—The 1961 amendment inserted the references to depositing estimated compensation and deleted “the summonses” formerly appearing after “filing” and “summons” formerly appearing before “complaint.”

§ 136-119. Costs and appeal.—The Highway Commission shall pay all court costs taxed by the court. Either party shall have a right of appeal to the Supreme Court for errors of law committed in any proceedings provided for in this article in the same manner as in any other civil actions and it shall not be necessary that an appeal bond be posted. (1959, c. 1025, s. 2.)

§ 136-120. Entry for surveys.—The State Highway Commission without having filed a complaint and a declaration of taking as provided in this article is authorized to enter upon any lands and structures upon lands to make surveys, borings, soundings or examinations as may be necessary in carrying out and performing its duties under this chapter, and such entry shall not be deemed a trespass, or taking within the meaning of this article; provided, however, that the Highway Commission shall make reimbursement for any damage resulting to such land as a result of such activities and the owner, if necessary, shall be entitled to proceed under the provisions of § 136-111 of this chapter to recover for such damage. (1959, c. 1025, s. 2.)

§ 136-121. Refund of deposit.—In the event the amount of the final judgment is less than the amount deposited by the Highway Commission pursuant to the provisions of this article, the Highway Commission shall be entitled to recover the excess of the amount of the deposit over the amount of the final judgment and court costs incident thereto: Provided, however, in the event there are not sufficient funds on deposit to cover said excess the Highway Commission shall be entitled to a judgment for said sum against the person or persons having received said deposit. (1959, c. 1025, s. 2.)

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

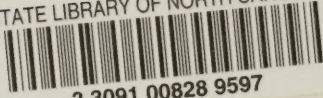
April 1, 1964

I, Thomas Wade Bruton, Attorney General of North Carolina, do hereby certify that the foregoing recompilation of the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

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Attorney General of North Carolina

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